United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

74-2288

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,



vs.

BENNIE HINES,

Appellant.

On Appeal from Judgment of Conviction of the United Sistes District Court for the Southern District of New York, Before Wyatt, J.

APPENDIX TO APPELLANT'S BRIEF

Kalman V. Gallop
Attorney for Defendant-Appellant
1345 Avenue of the Americas
45th Floor
New York, New York 10019
(212) 246-2880

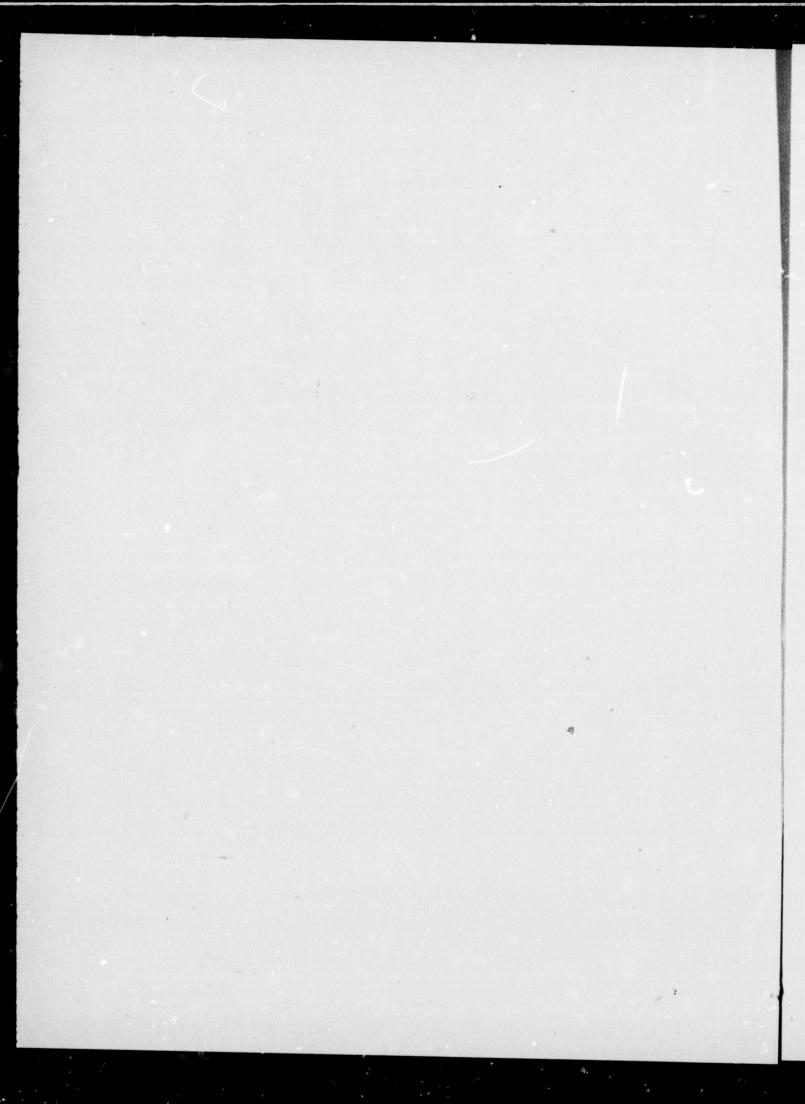
PAGINATION AS IN ORIGINAL COPY

INDEX

	PAGE
Docket Entries	1a
Indictment (74 CRIM 268)	4a
Oral Motion To Strike Paragraph 2 Of Each Count as Surplusage	11a
Waiver Of Trial By Jury	12a
Judgment Appealed From (Filed August 23, 1974)	13a
Notice of App al (Filed August 29, 1974)	15a
Excerpts From Transcript Of Proceedings:	
Hearing of May 7, 1974	16a
Hearing of May 8, 1974	119a
Hearing of July 3, 1974	216a
W C	
WITNESSES FOR GOVERNMENT Daniel Hurley:	
Daniel Hurley:	33a
Daniel Hurley: Direct	33a 40a
Daniel Hurley:	40a
Daniel Hurley: Direct	40a
Daniel Hurley: Direct Cross Redirect	40a 42a
Daniel Hurley: Direct	40a 42a 44a
Daniel Hurley: Direct	40a 42a 44a

	PAGE
Victor Quardi:	
Direct	51a
Alfred S. Klass:	
Direct	56a
Cross	59a
John Clarke:	
Direct	67a
Cross	68a
Redirect	70a
Recross	71a
(Recalled)	
Direct	124a
Cross	128a
Redirect	136a
Recross	
Anthony Vitaliano:	
Direct	110a
Clarance Watson:	
Direct	140a
Roosevelt Bell:	
Sworn	146a
Direct	
Cross	

INDEX		iii
		PAGE
James Rothstein:		
Direct		169a
Donald M. Watson:	-	
Direct		183a



DOCKET ENTRIES

CRIMINAL DOCKET UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES

v.

74 CRIM. 268

BENNIE HINES

ATTORNEYS

For U.S.: Charles E. Padgett, AUSA

For Defendant: Kalman V. Gallop 1345 Avenue of the Americas N.Y.C. 10019 TEL: 246-2880

For U.S.: T.18, S.7203 U.S. Code. unlawful failure to file an income tax return for five calendar years. (1968-1972)
(Five Counts)

Docket Entries

DATE	PROCEEDINGS		
3-18-74	Filed indictment ordered sealed. B/W ordered. Motley, J.		
4-1-74	Deft Hines appears (atty Kalman Gallop present) Deft pleads not guilty, case assigned to Wyatt, J. 10 days for motions, Deft to be photographed & fingerprinted, bail fixed by Court at \$10,000 PRB secured by \$1,000 cash, limits extended to the Southern Dist. of NY. onlyTenney, J.		
4-8-74	Filed MEMO on oral motion to strike Paragraph 2 of each count as surplusage is grantedSO ORDEREDWYATT, J. (Mailed notice)		
5-7-74	Trial begun. Deft. waives trial by jury in writing.		
5-8-74	Trial cont'd & concluded. Decision Reserved Wyatt J.		
5-9-74	Filed Waiver of Trial by Jury. Approved Wyatt J.		
7-3-74	Court finds the deft. guilty on each of counts 1 thru 5. Sentence Aug. 23, 1974. Bail cont'dWyatt,J.		
7-12-74	Filed transcript of record of proceedings, dated April 1, 1974.		
7-16-74	Filed transcript of record of proceedings, dated May 7,8, 1974.		
8-23-74	Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR, on count 1, ONE (1) YEAR, on count 2. Imposition of sentence, on each of counts 3,4 and 5 suspended, and deft is placed on probation for a		

Docket Entries

DATE

PROCEEDINGS

period of FIVE (5) YEARS. Sentence on count 2, to run consecutively with sentence imposed on count 1. Period of probation on each of counts 3,4 and 5, to run concurrently with each other, and to begin after service of sentence on counts 1 and 2. Deft. continued released on bail pending appeal.....Wyatt,J.

- 8-29-74 Filed notice of appeal from the judgment of conviction as entered on 8-23-74. Copies mailed to Bennie Hines, c/o Kalman V. Gallop, 1345 Ave. of the Americas, 45th Floor, N.Y.C. 10019, U.S. Attorney's Office.
- 8-29-74 Filed transcript of record of proceedings dated 7-3-74.

74 CRIM. 268

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

(Same Title)

COUNT I

The Grand Jury charges:

- 1. BENNIE HINES, the defendant, then a resident of and conducting his business in the Southern District of New York during the calendar year 1968 and who had and received during said calendar year gross income in the approximate amount of \$18,000, and who by reason of such income was required by law, after the close of said calendar year and on or before April 15, 1969, to make an income tax return to the Internal Revenue Service stating specifically the items of his gross income and any deductions and credits to which he was entitled, unlawfully, wilfully and knowingly did fail to make said income tax return to the said Internal Revenue Service or to any other proper officer of the United States of America within said proper time.
- Said unreported income in the approximate amount of \$18,000, represented monies paid to and on behalf of the

defendant pursuant to an agreement and understanding with persons to the Grand Jury known and unknown whereby the defendant, BENNIE HINES, operated and assisted in the operation of a prostitution enterprise and participated in the proceeds of prostitution activity.

(Title 26, United States Code, Section 7203)

COUNT II

The Grand Jury further charges:

and conducting his business in the Southern District of New York during the calendar year 1969 and who had and received during said calendar year gross income in the approximate amount of \$14,000 and who by reason of such income was required by law, after the close of said calendar year and on or before April 15, 1970, to make an income tax return to the Internal Revenue Service stating specifically the items of his gross income and any deductions and credits to which he was entitled, unlawfully, wilfully and knowingly did fail to make said income tax return to the said Internal Revenue Service or to any other proper

officer of the United States of America within said proper time.

2. Said unreported income in the approximate amount of \$14,000, represented monies paid to and on behalf of the defendant pursuant to an agreement and understanding with persons to the Grand Jury known and unknown whereby the defendant, BENNIE HINES, operated and assisted in the operation of a prostitution enterprise and participated in the proceeds of prostitution activity.

(Title 26, United States Code, Section 7203)

COUNT III

The Grand Jury further charges:

1. BENNIE HINES, the defendant, then a resident of and conducting his business in the Southern District of New York during the calendar year 1970 and who had and received during said calendar year gross income in the approximate amount of \$14,000 and who by reason of such income was required by law, after the close of said calendar year and on or before April 15, 1971, to make an income tax return to the Internal Revenue Service

INDICTM NT

stating specifically the items of his gross income and any deductions and credits to which he was entitled unlawfully, wilfully, and knowingly d.d fail to make said income tax return to the said Internal Revenue Service or to any other proper officer of the United States of America within said proper time.

2. Said unreported income in the approximate amount of \$14,000, represented monies paid to and on behalf of the defendant pursuant to an agreement and understanding with persons to the Grand Jury known and unknown whereby the defendant, BENNIE HINES, operated and assisted in the operation of a prostitution enterprise and participated in the proceeds of prostitution activity.

(Title 26, United States Code, Section 7203)

COUNT IV

The Grand Jury further charges:

1. DENNIE HINES, the defendant, then a resident of and conducting his business in the Southern District of New

York during the calendar year 1971 and who had and received during said calendar year gross income in the approximate amount of \$29,000 and who by reason of such income was required by law, after the close of said calendar year and on or before April 17, 1972, to make an income tax return to the Internal Revenue Service stating specifically the items of his gross income and any deductions and credits to which he was entitled, unlawfully, wilfully and knowingly did fail to make said income tax return to the said Internal Revenue Service or to any other proper officer of the United States of America within said proper time.

2. Said unreported income in the approximate amount of \$29,000, represented monies paid to and on behalf of the defendant pursuant to an agreement and understanding with persons to the Grand Jury known and unknown whereby the defendant, BENNIE HINES, operated and assisted in the operation of a prostitution enterprise and participated in the proceeds of prostitution activity.

(Title 26, United States Code, Section 7203)

COUNT V

The Grand Jury further charges:

- 1. BENNIE HINES, the defendant, then a resident of and conducting his business in the Southern District of New York during the calendar year 1972 and who had and received during said calendar year gross income in the approximate amount of \$22,000 and who by reason of such income was required by law, after the close of said calendar year and on or before April 17, 1973, to make an income tax return to the Internal Revenue Service stating specifically the items of his gross income and any deductions and credits to which he was entitled, unlawfully, wilfully and knowingly did fail to make said income tax return to the said Internal Revenue Service or to any other proper officer of the United States of America within said proper time.
- 2. Said unreported income in the approximate amount of \$22,000, represented monies paid to and on behalf of the defendant pursuant to an agreement and understanding with persons to the Grand Jury known and unknown whereby the defendant, BENNIE HINES, operated and assisted in the operation of

a prostitution enterprise and participated in the proceeds of prostitution activity.

(Title 26, United States Code, Section, 7203)

PAUL J. CURRAN

United States Attorney for the Southern District of New York ORAL MOTION TO STRIKE PARAGRAPH 2
OF EACH COUNT AS SURPLUSAGE IS GRANTED.

(Filed Memo 4/8/74)

74 CRIM. 268

UNITED STATES LISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

(Same Title)

At a pretrial conference on Thursday, April 4, 1974, counsel for defendant asked that paragraph 2 of each count be eliminated as unnecessary and as prejudical to defendant. This is treated as an oral motion under Fed. R. Crim. F. 7(d) to strike the named paragraphs as surplusage and is granted.

The counts charge wilful failure to "make" (file) income tax returns. The government has candidly conceded that the paragraphs in question are not needed to state any element of the offense, but suggests that the source of the income (alleged to be prostitution) will necessarily be made known to the jury through voir dire questions to the jury panel, the government's proof, etc. To avoid any possibility, however remote, that the unnecessary indictment paragraphs will prejudice the defendant, they are struck out.

SO ORDERED.

Dated: April 8, 1974

INZER B. WYATT United States District Judge WAIVER OF TRIAL BY JURY

(Filed 5/9/74)

74 CRIM. 268

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

(Same Title)

The defendant, BENNIE HINES, having been advised by his counsel, Kalman Gallop, Esquire, and by the Court of the defendant's constitutional right to a trial by Jury, and upon the consent of the United States of America, by Paul J. Curran, United States Attorney for the Southern District of New York, Charles E. Padgett, Special Attorney United States Department of Justice, of counsel, said defendant, BENNIE HINES, hereby voluntarily waives trial by jury and consents to trial by a Court alone without a jury, in accordance with Rule 23 of the Federal Rules of Criminal Procedure.

Dated: New York, New York May 7th, 1974

BENNIE HINES
Defendant

APPROVED:

KALMAN GALLOP
Attorney for Defendant

United States Attorney

INZER B. WYATT

By: CHARLES PADGETT
Special Attorney

May 7, 1974

JUDGMENT APPEALED FROM

(Filed 8/23/74)

74 CRIM. 268

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

(Same Title)

On this 23rd. day of August, 1974, came the attorney for the government and the defendant appeared in person and by Kalman V. Gallop, Esq.

IT IS ADJUDGED that the defendant upon his plea of not guilty, and a finding of guilty by a jury, has been convicted of the offense of unlawfully, wilfully and knowingly did fail to make an income tax return to the Internal Revenue Service.

(Title 26, U.S. Code, Section 7203)

as charged in counts 1,2,3,4 and 5, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR, on count 1, ONE (1) YEAR, on count 2. Imposition of sentence, on each of counts 3,4 and 5 suspended, and defendant is placed on probation for a period of FIVE (5) YEARS.

Sentence on count 2, to run consecutively with sentence imposed on count 1. Period of probation on each of counts 3, 4 and 5, to run concurrently with each other, and to begin after service of sentence on counts 1 and 2.

Defendant continued released on bail pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

INZER B. WYATT, United States District Judge

RAYMOND F. BURGHARDT, Clerk.

NOTICE OF APPEAL

(Filed 8/29/74)

74 CRIM. 268

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

(Same Title)

NOTICE IS HEREBY GIVEN that BENNIE HINES, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment of conviction entered on the third day of July, 1974 and the sentence imposed by this Court on the 23rd day August, 1974.

> KALMAN V. GALLOP Attorney for defendant, BENNIE HINES 1345 Avenue of the Americas 45th Floor August 23, 1974 New York, New York 10019 (212) 246-2880

The Honorable Paul J. Curran TO: United States Attorney Southern District of New York

Dated: New York, N.Y.

TO: Clerk of the United States District Court Southern District of New York

1	UNITED STATES DISTRICT COURT
2	SOUTHERN DISTRICT OF NEW YORK
3	x
4	UNITED STATES OF AMERICA :
5	: 74 Cr. 268
8	BENNIE HINES,
7	Defendant :
8	x
9	New York, May 7, 1974
10	9:30 a.m.
11	
12	BEFORE: HON. INZER B. WYATT
13	
14	APPEARANCES:
15	PAUL J. CURRAN, ESQ.
16	United States Attorney for the
	Southern District of New York CHARLES E. PADGETT, ESQ., and
17	I POLIADO M CUALI ESO.
18	Special Attorneys, Department of Justice
19	KALMAN V. GALLOP, ESQ.
19	Attorney for the Defendant.
20	
21	
22	
23	

THE COURT: Now, Mr. Clerk, will you call the case.

THE CLERK: United States of America versus Bennie

Hines.

Are both sides ready?

MR. PADGETT: Government ready.

MR. GALLOP: Defendant ready.

THE COURT: After our discussion yesterday, I read the Holland case and I read the Platt case, and I am going to read the Johnson case, which is earlier than Holland, but I haven't done it yet.

I had indicated my views yesterday about the evidence points that we took up, and I left open the question about living expense evidence.

The Government, I believe, is entitled to prove the living expenses during a taxable period of a defendant indicted on the charges here. Holland specifically refers to that as an addition to the difference in net worth between the opening period and the closing period, so the relevance of the evidence is clear. But whether the evidence is competent is another question. But I think the proper procedure is for me to listen to it and, of course, Mr. Gallop will have the full opportunity to cross-examine. It may eventually be rejected or it may be given varying degrees of value from a little better than zero, considerable value, depending on what it is -- I

don't really know what it is -- so my inclination therefore is to let the Government put in the evidence.

Now, Mr. Padgett, you said yesterday that you might have to have some gaps; due to the necessities of the situation, I was just going to say if we do have gaps, a good time to have a gap would be around lunchtime because then we could have a longer time for lunch and I could use that time. But we will see what we do.

Now we have some preliminary matters. Do we have some questions about the waiver of jury?

MR. GALLOP: Yes, Your Honor, I believe the Government prepared a waiver. Also I still have not received, although they are not relevant, there is no jury, but the requests to charge had some information in it.

MR. PADGETT: Your Honor, in connection with that I would like to inform the Court of one piece of misinformation which I gave the Court yesterday. As of Friday night, we were unsure whether the minimum gross income for 1971 was \$1700 or \$1725. In order to protect the defendant, we chose the higher figure. Yesterday evening I was informed it is in fact the lower figure, \$1700, so --

THE COURT: \$1700?

MR. PADGETT: \$1700.

THE COURT: And not \$1725?

ω

3

4

5

6

8

9

10

11

13

12

14

15 16

17

18

19

20

22

23

24

25 .

MR. PADGETT: That is correct, sir. All other figures would remain the same.

THE COURT: All right.

Mr. Padgett, would you give Mr. Gallop a copy?

MR. PADCETT: I did.

THE COURT: Cood.

Mr. Hines.

(Defendant rises.)

BY THE COURT:

- Q Is this your signature on this document?
- A Yes, sir, it is.
- Q Do you know that by executing this document, by signing it, you are giving up your right to have a jury of 12 men and women decide whether you are guilty or not guilty of the charges in this indictment?
 - A Yes, sir.
 - You have been able, of course, to talk to Mr.
- Gallop, your attorney, about waiving trial by jury?
 - A Yes, sir.
 - Q And you want to do that?
 - A Yes, sir.
 - Q And you are doing it voluntarily?
 - A Yes, sir.
 - Q And you understand that when you give up your right

to trial by jury, that amounts to a consent that I determine whether you are guilty or not guilty; do you understand?

A Yes, sir.

THE COURT: All right.

Does the Government want to make an opening statement?

MR. PADGETT: Yes, a brief one, if Your Honor would permit.

THE COURT: All right.

MR. PADGETT: Your Honor, Mr. Gallop, may it please the Court:

Since a jury has been waived, I will of course be quite brief and quite skeletal in my opening. Suffice it to say the Government will show those elements necessary to prove the case beyond a reasonable doubt, that is to say, the Government will prove that the defendant is an individual who is required by law to file an income tax return during the years in question, did not in fact file, and that his failure to so file was willful and deliberate. The Government will show that the defendant during the years in question was employed, that immediately prior to the years in question, he admitted that he was employed, and he stated that he was employed as a pimp, a gambler, and a hustler.

The Government will also show that during the years

in question, the defendant consistently and consciously conducted a business, that being a business of managing a stable of prostitutes.

The Government will also show the receipt of income by the defendant during those years. The Government will also show expenditures in excess of the minimum gross amounts of income required for that year.

With respect to the second --

THE COURT: Wait. Say that last over again.

MR. PADGETT: The Government will show not only the receipts of income, and the actual cash receipts by the defendant, the Government will also show that the defendant expended sums of money in excess of the amount of minimum gross income required by law to constitute a person required to file.

THE COURT: In other words, your position is that these expenditures are non-deductible in computing taxable income and therefore must be added to the cash income?

MR. PADGETT: No, sir. The Government's position is that the defendant's income was -- the defendant's receipt of monies were non-deductible, the tax items, and that his expenditures in fact evidence that receipt of monies.

May I continue?

THE COURT: Oh, that's not the net worth point?

cg

MR. PADGETT: No, sir.

THE COURT: In other words, you are proving receipt of income and disbursement of that income in non-deductible ways, and therefore that income was reportable; is that it?

MR. PADGETT: Well, sir, we are proving two points:

One, the receipt of income in some of the years in question;
we are also proving in all the years in question, expenditures
in excess of the minimum gross income amounts. We feel that
the second item, that is to say the expenditure theory, is
sufficient, if believed, is sufficient to convict the defendant. However, above and beyond that, we show direct receipts
of income by the defendant for some of those years from illegal
sources mentioned before.

THE COURT: But still the expenditures that you show are non-deductible expenditures. The non-deductibility must be present. Is it?

MR. PADGETT: No, sir. The expenditures evidence, the deductibility or non-deductibility of the expenditures is not really an item in a failure to file case under the Government's position. The issue of expenditures is evidentiary to cause an inference to be had by the trier of the facts that if there were expenditures in this amount, there must be income in that amount. In other words, before the defendant could spend the money he must have received it, and we prove by the

expenditure, that is to say by the spending of money, that there was a receipt of monies to correspond with the expenditures and minimum in that year.

THE COURT: But for that to be relevant, we have to assume that there was zero net worth at the beginning of the taxable year.

MR. PADGETT: Yes, sir.

THE COURT: All right. So if there is zero net worth at the beginning of the taxable year, and then there are expenditures in excess of the minimum amount, you are saying there has to be income before there can be expenditures?

MR. PADGETT: Yes, sir.

THE COURT: And where do we -- forget the deductibility, but where -- If I infer there had to be income, how do I infer that it is taxable income?

MR. PADGETT: It need not be taxable, Your Honor.

THE COURT: That is a separate element.

MR. PADGETT: All it need be is gross income. The taxability of the income -- I see what Your Honor is driving at. Your Honor is driving at as an exempt source?

THE COURT: Exempt source. I may have used the wrong word, exempt source.

MR. PADGETT: We will show the fact that it is not an exempt source by indicating the efforts the Government has

made to determine the source of the income.

THE COURT: All right.

MR. PADGETT: We will in fact show a likely source of the income, that being his income from prostitutes, from gambling and from "hustling."

The second element that the defendant did not file will be established obviously through the testimony of representatives of the service center who will indicate that there is no record of his having filed for the years in question, indeed for years prior to that.

The third element which the Government must and will prove is the willful nature of the defendant's failure to file, that is to say the factual contentions which surround the defendant and surround his failure to file must be a wilfull context or the Government's proof will fail. The Government's proof will show that the defendant lived in what might be termed a shadow world, a world of false names, false addresses of what can reasonably be inferred to have been a totally irresponsible world, one where no recognition was paid to the mores of society and no recognition was made to the customs of society and least of all those customs and laws which require one to file an income tax return. Those facts will allow the Court to infer the wilfull nature of the defendant's failure to file.

. 9

The Government will show that the defendant did not earn money from any legitimate sources. The Government will show that it has exhausted all reasonable efforts to show that the defendant received monies, although not earning them, from a legitimate source.

Upon the conclusion of that evidence, the Government will ask the Court to infer, as it may reasonably do, that the defendant having failed to file, was first a person required by law to file, and secondly that his failure to file was wilfull.

The Government is conf dent that the evidence will indicate that clearly and beyond reasonable doubt.

THE COURT: Mr. Padgett, what is the significance of the fact that the income, as you say, was not from a legitimate source?

MR. PADGETT: Well, sir, in order to establish the wilfull nature of the failure to file, the Government will show the background of the defendant, and it is the Government's contention that one of those elements of his background is in my term a lawless nature. That is to say he is involved in an enterprise which is by law illegal. Consequently, if the Government shows one of the sources to be unlawful, we believe the Court can reasonably infer that the defendant would not then, having received the money from an unlawful source, an

1

5

4

7

6

8

10

11

13

14

16

17

18

19

21

24

23

25

illegal source, then declare that income as he is required to by law. That is the purpose for this illustrating to the Court that it is an illegal source of income.

THE COURT: You mean that people with unlawful income are very likely wilfully not to file income tax returns because that might have a tendency to disclose their violations of law?

MR. PADGETT: Yes, sir.

THE COURT: All right. I understand.

Mr. Gallop, would you like to say anything by way of opening?

MR. GALLOP: Yes, I would, Your Honor.

THE COURT: All right.

MR. GALLOP: I think certain basic facts should be laid out before the Court so you can better understand not only what I believe the Government's case to be but what my defenses to this case are.

The first statement I think is rather obvious but very important. This is not a case to collect taxes.

THE COURT: I understand.

MR. GALLOP: There is no claim any tax is due, if in fact any taxes are due, there are adequate civil remedies to enforce it, so we start off with the understanding that there is a criminal nature here which goes far beyond the

CB

1

2

3

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

question of simply payment or non-payment of taxes, whether the source be legal or illegal.

The next point I wish to make, because I think it is important in understanding the case, is that I have already been referred to cases which I will submit to the Court in a memorandum of law I am in the process of preparing, is that this case is a case of failure to file a tax return. It is somewhat involved in that a net worth and expenditures approach is being used and all of the cases that would be referred to using that approach are cases where tax evasion is charged. I think that is quite significant because some of the language therefore becomes inapplicable to a case of failure to file, and a good example of that would be where evasion is charged, and you have a net worth case, there is a tax return in existence, and the taxpayer has declared all his deductions on that tax return so it does not become a problem to the Government to prove that the deductions, what the net income or taxable income would be, since the taxpayer on the return has declared his deductions, the Government will usually not contest those. Therefore, all additional income is considered to be taxable income. The language which the Court uses has in mind the existence of a tax return by the taxpayer. I know the Government has mentioned in their opening, and it will also be stipulated to, that no tax return was filed by the defendant

at any time, not only for the years in question, so I think it must be kept --

THE COURT: Never filed a tax return?

MR. GALLOP: Never filed a tax return.

So I think in analyzing the cases and the facts, this must be kept in mind that there is no point in time when a defendant filed a tax return or, as a matter of fact, as will be stipulated to, received a W-2 form or a 1099 form.

Another point I would like to point out is of course made obvious --

THE COURT: Excuse me, Mr. Gallop, but a corollary of your last point is that the language in Holland and other cases about the taxpayer having given the Government leads doesn't apply here because that's in the context of an audit by Internal Revenue agents of the taxpayer, and during the audit, if the taxpayer gives them what has come to be called "leads," then the Government is in some instance under some duty.

MR. GALLOP: That would be an excellent example, Your Honor.

THE COURT: But here no Covernment agent called upon the defendant so we have no question about the leads.

MR. GALLOP: Exactly. That would be another problem with the language in the Holland case that would not really be truly applicable. But of course there is no question the

9.

Government is attempting in large part, if not entirely, to prove its case by circumstantial evidence, so the overriding rules which the court clearly indicates is that the courts must be very circumspect in their reviewing the evidence and the weight that it would give to that evidence.

The last point I'd like to point out, and I will mention it in a memorandum I am preparing, it is clear that the Government claims, and again I believe we have a stipulation to that effect, that there is no so-called legitimate income ever earned by the defendant. In other words, I believe they will say all the income to be proven is income from illegitimate sources.

I would respectfully refer the Court's attention to the dissent in the Rutkin case which is one of the cases --

THE COURT: That's the Canadian liquor man?

MR. GALLOP: Right. There are three cases that the Supreme Court decided which dealt with illegal activities that I always refer to: the Wilcox case, Rutkin case, and the James case. I think it is significant because the Government in its requests to charge evidently felt that the possibility of a defense that illegal income was non-taxable might arise during the course of this trial. I think that is an important thing to note not in the sense that I would claim that illegal income is not taxable. On the contrary, I indicated to the

2

3

5

6

7

8

9

10

11

12

13

14

Court that is not a defense, but the fact that it is a valid question that there were three United States Supreme Court decisions addressed to that particular issue and why I asked the Court to pay special attention to the dissent in Rutkin is not that I believe that the dissent should be controlling and an illegal income should not be taxable, but the Court I believe sets forth a very persuasive essay that the federal court system and the Internal Revenue criminal code should not be used as a method of enforcing local and state criminal laws. And I think in a sense this would be very appropriate in this case. We have had some views already about the defendant's way of life. I don't think it is the purpose of the Internal Revenue Code to be used as a weapon to enforce clearly local criminal matters, and I am sure there are ample state and local agencies that can do that, and it is not necessay --THE COURT: Am I not right that Rutkin was the

MR. CALLOP: I believe, Your Honor --

Canadian man who had a liquor business, an illicit liquor

THE COURT: I think Theodore Keindl tried the case.

MR. GALLOP: What I have in my notes is that the first case, the Wilcox case, involved an embezzlement and the court held that embezzlement was not -- embezzled funds were not taxable. The Rutkin case came along where money was received

22

23

24

25

business?

5 6

7 8

9

10

11

12 13

14

15 16

17

18

19

20

21

22

23

24

25

by extortion; I think it was a labor leader, Rutkin.

THE COURT: Is it "T" or "D"?

MR. GALLOP: R-u-t-k-i-n, 343135, and the court held there money received by extortion was taxable.

THE COURT: I've got it mixed up with another case.

MR. GALLOP: The only point I think the court makes a persuasive argument in the dissent that the Internal Revenue Code should not be used as a means to enforce strictly local and state criminal matters, and I think it is important in the context of this case.

I have no further statements.

THE COURT: All right.

MR. PADGETT: Your Honor, might I inquire about one I don't know if Mr. Gallop mentioned it, but it was overruled by the Supreme Court.

MR. GALLOP: Yes. It was overruled.

THE COURT: All right, Mr. Padgett.

MR. PADGETT: If I could ask the Court's indulgence, Your Honor, to call a witness out of order. I find my witness is due to be married at two o'clock this afternoon.

MR. GALLOP: Before the Government begins, are there any witnesses in the courtroom?

MR. PADGETT: Yes.

MR. GALLOP: I ask witnesses be excluded, Your Honor

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

THE COURT: Mr. Clerk, if there are any persons in the courtroom who will be witnesses we will have to ask you to go to the witness room and the clerk will show you where.

THE CLERK: Are there any witnesses?

If you will follow me.

MR. PADGETT: Your Honor, I should indicate to the Court that Special Agent Clarke who is seated to my right and is the case agent will be called for one brief item. If counsel wishes him excluded --

MR. GALLOP: I have no objection to his staying.

THE COURT: All right.

Is the first witness present?

MR. PADGETT: Yes.

The Government calls Ferdinand Pedreira.

FERDINAND PEDREIRA, called as a witness

by the Government, was duly sworn and testified as follows:

THE COURT: Mr. Pedreira, we will ask you to keep your voice up so that the gentleman who is seated at the farthest end of the table can hear you.

All right, you may be seated.

DIRECT EXAMINATION

BY MR. PADGETT:

Mr. Pedreira, would you tell us your name and address? Q

Ferdinand Pedreira, 400 East 77th Street, New York

22

23

24

11	
	A 33a Pedreira-cross 33
1	egs redressa
2	Q Three different names on three different pictures?
3	A Yes.
4	Q When were you shown these pictures?
5	A Quite a few times.
6	Q By whom?
7	A By the police, by the federal agents.
8	Q Are you talking about the agents who were investi-
9	gating this case?
10	A Not just this case, other cases .
11	Q I see. And when did they show you those pictures?
12	A I can't remember that. It is too many times.
13	MR. GALLOP: I have no further questions.
14	THE COURT: Any further questions?
15	MR. PADGETT: No, Your Honor.
16	THE COURT: All right. Thank you, Mr. Pedreira.
17	(Witness excused.)
18	MR. PADCETT: The Government calls Special Agent
19	Daniel Hurley.
20	DANIEL HURLEY, called as a witness by the
21	Government was duly sworn and testified as follows:
22	DIRECT EXAMINATION
23	BY MR. PADGETT:

Mr. Hurley, will you tell us your occupation?

I am Assistant Special Agent of the Secret Service

24

25

Q

A 34a Hurley-direct

egs

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

Office in Chicago.

Q For how long have you been assigned to Chicago?

A About a year.

Q What was your assignment before that?

A I have had several. I was the agent in charge of Buffalo, New York.

Q In October of 1967, were you assigned to the New York office?

A Yes.

Q Do you recognize the gentleman to my right?

A Yes, sir.

Q And when did you first see him?

A October 29, 1967.

MR. PADGETT: May the record reflect that the witness has indicated the defendant.

Q Did you speak to the defendant in the course of your official duties?

A Yes, sir.

Q And did you ask the defendant his name?

A Yes, sir.

Q What name did he give?

A Walter Mitchell.

Q Did you thereafter ask him for some identification?

A Yes, sir.

22

23

24

1	egs A 353 Hurley-direct 35
2	Q And did he produce identification?
3	A Yes, sir.
4	Q What identification did he produce?
5	A I think there was a Michigan driver's license.
6	Q And what name was on that license?
7	A It was a Bennie Hines, Jr.
8	Q Did you have occasion to make a photocopy of that
9	license?
10	A Yes, sir, I did.
11	(Government Exhibit 1 marked for identification.)
12	Q I show you Covernment Exhibit 1 for identification.
13	Do you recognize it?
14	A Yes, sir.
15	Q Is that a copy of the license shown to you by the
16	defendant in October 1967?
17	A Yes.
18	Q Do you know where the original is?
19	A I believe that is the original right there. The
20	license I returned to the individual.
21	.Q That is the original photocopy?
22	A Yes.
23	MR. PADGETT: Your Honor, I would offer this as
24	Government Exhibit 1 in evidence.
25	MR. CALLOP: No objection.

And did he say where Miss Clements had received the

He said that she was turning tricks for him at

23

24

25

Q

A

money?

egs

that time.

3

2

Now --Q

4 5

means that she was acting as a prostitute?

6

THE WITNESS: I would interpret it that way, sir.

THE COURT: You mean you didn't go into that with

7 8

him, those were his words?

9

THE WITNESS: We discussed it later on.

THE COURT: Am I to assume that "turning tricks"

10

Thereafter, were you present at a discussion between Q

11

Mr. Hines and Assistant U.S. Attorney Sterling Johnson?

12

Yes, sir. A

13

Was Mr. Hines asked his occupation by Mr. Johnson? Q

14

Yes, sir. A

15

And did he say what his occupation was? Q

16

I think he said gambler and pimp. A

17

Did he also state that he was a hustler? Q

18

Yes, sir. A

19

MR. CALLOP: When did this conversation take place?

20

THE COURT: Yes, Mr. Padgett, do you want to bring

21

that out?

22

MR. PADGETT: Yes.

23

THE COURT: When Sterling Johnson asked him the question.

24

25

How long after the conversation which you described Q taking place on the 25th of October '67 did this conversation

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SOUARE, NEW YORK, N.Y. CO 7-4580

A 384 Hurley-direct

egs

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

with Mr. Johnson take place?

A This took place on the morning of the 26th here in the Southern District.

Q Now, sir, you mentioned that the initial conversation, the 25th, took place in the Kimberly Hotel; is that correct?

A Yes, sir.

Q Prior or subsequent to that conversation did you have occasion to examine the records of the Kimberly Hotel?

A Yes, sir.

Q And did you remove Mr. Hines' registration card from the records of the Kimberly Hotel?

A Yes, sir.

(Government Exhibit 2 marked for identification.)

Q Now, sir, I show you this card. Do you recognize it?

A Yes, sir.

Q What do you recognize it to be?

A It is the registration card which we took from the Hotel Kimberly.

Q Would you tell us in what name it is?

A Mr. and Mrs. Walter Mitchell.

MR. PADGETT: I offer this as Government's 2 in evidence.

MR. GALLOP: Your Honor, I would have no objection if

22

23

24

3

4 5

6

7

8

10

12

11

13

15

17

16

18

20

19

21

22

24

23

25

witness.

THE COURT: Mr. Gallop.

we can just elicit some testimony from the witness as to how he knew this was the registration card of Mr. Hines. I don't believe therehas been any testimony.

BY MR. PADGETT:

- Q Mr. Hines identified himself by what name?
- A Initially, Walter Mitchell.
- Q And this is the registration card for Room 25-18.
- In what room did you speak with Mr. Hines?
 - A Initially I spoke to him in the lobby.
 - Q Did you ever speak to him in a hotel room?
 - A Not that I can recall.
- Q All right. Did you check the registry to determine if there were any other registrations for Mitchell?
 - A Yes, sir.
- Q And were there any other registrations for Mitchell at that time?
 - A No, sir.

MR. GALLOP: No objection.

THE COURT: All right, mark it.

(Government Exhibit 2 received in evidence.)

THE COURT: All right.

MR. PADCETT: I have no further questions of this

CROSS-EXAMINATION

BY MR. GALLOP:

- Q You mentioned the expression "turning tricks." Was there a woman involved in this little episode?
 - A Yes, sir.
 - Q And did you interview her?
 - A Yes, sir.
 - Q And did she indicate that she gave money to Mr. Hines?
 - A No, sir.
 - Q What did she indicate to you?
- MR. PADGETT: I will object to this, Your Honor. It is hearsay.

THE COURT: No, I will permit it.

A She stated vehemently that she hadn't given him any money.

THE COURT: Was this Mildred Clements?

MR. GALLOP: Yes, sir.

No further questions.

THE COURT: Anything else, Mr. Padgett?

MR. PADGETT: Yes, Your Honor.

Your Honor, at this time I'd like to make an offer of proof prior to asking my next question. I intend to ask the witness the circumstances surrounding the monies discussed by himself, Mr. Hines, Mr. Johnson and the young lady. I do

6

1

2

3

4

5

8

10

11

12

14

13

15

16

18

17

19

20

22

23

24

this in order to indicate to the Court a motivation for the young lady, Miss Clements, denying that she had given the monies to Mr. Hines in view of their relationship, and that is the sole purpose for my asking the question.

THE COURT: Mr. Gallop, do you have any objection?

MR. GALLOP: I don't really understand what Mr.

Padgett is trying to say.

THE COURT: I think what he says is he is going to ask the agent, "How did you come to be there, what happened, what caused you do ask the defendant his name," et cetera.

MR. GALLOP: I think that has already been brought out by evidently the admission that he says that the defendant was involved in all these unseemly activities. I don't see what any purpose would be to get into it again, the only point being --

THE COURT: Well, it bears on his conversation between the agent and Mildren Clements. According to the agent, the defendant said that she gave him money. We haven't gotten when or how much, but she said, a -- the defendant said she gave him money. The agents asked Mildred Clements, did you give the defendant money, and she said no vehemently.

MR. GALLOP: I would suggest this: Let Mr. Padgett
pose the question and we can have just a few seconds hesitation
before the witness answers, if I want to object I will make my

-60

2

3

5

6

7

8

9

10

11

12

13

14

15

objection.

THE COURT: All right. Go ahead, Mr. Padgett.

REDIRECT EXAMINATION

BY MR. PADGETT:

Q Obviously, Mr. Hurley, there is a discrepancy between what the young lady stated and what Mr. Hines stated as to the source of the monies. Can you ascribe any motivation to Miss Clements for stating that she never gave to Mr. Hines the money?

MR. GALLOP: Objection.

THE COURT: Sustained.

You can't ask it that way, Mr. Padgett. You can get it another way.

MR. PADGETT: I understand.

- Q As the result of Mr. Hines' having been in possession of that money, were any charges placed against him?
 - A Yes, sir.
 - Q And what were those charges?
 - A Possession of counterfeit currency.

MR. PADGETT: Thank you, sir.

THE COURT: Any questions, Mr. Gallop?

MR. CALLOP: No. I would just ask that the last question and answer be stricken as irrelevant.

THE COURT: No, I think I will permit it. The defendant says that he got the money from somebody else, and

16

17

18

20

21

23

24

9

0

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

if the somebody else -- if the money involved is counterfeit, arguably, an inference could be drawn that somebody else knew it was counterfeit money and when she was asked whether she had given the defendant any money, she would say no. I will permit it.

I will let it stand.

All right, anything else?

MR. CALLOP: No further questions.

THE COURT: All right, thank you.

(Witness excused.)

MR. CALLOP: Your Honor, before the next witness comes in, there are numerous witnesses -- if there is any 3500 material which is going to be at all lengthy, I would appreciate the Government giving it to me either before our lunch break or over the evening so I don't have to take the Court's time and read it before any cross-examination.

THE COURT: Well, I always think that is reasonable.

I have no power to require it. I recommend it. But I have to leave that to the prosecutor.

MR. PADGETT: Your Honor, I have no objection to that. I think it would expedite matters. The Government is certainly in accord with it. I don't understand what Mr. Gallop means by "lengthy."

THE COURT: If it is longer than one page, we may

Could you tell us what those duties entail?

25

Q

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: All right, thank you, Mr. Matos. You may be excused.

(Witness excused.)

MR. PADGETT: The Government calls Harry Kreitzer.

HARRY KREITZER, called as a witness by

the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. PADGETT:

- Q Mr. Kreitzer, what is your occupation?
- A Managing agent, real estate managing agent.
- Q Are you familiar with an apartment building known as the Westerly?
 - A Yes, sir.
- Q Did you ever perform any services or have any business dealings with that apartment building?
 - A Yes, sir.
 - Q When was that, sir?
 - A As of last May, I was there for six years.
 - Q And in what capacity were you associated, sir?
 - A Managing agent.
 - Q Can you tell us what some of your duties were?
 - A Well, I used to manage the building and rent apartments in the building.

THE COURT: Where was the building?

(Covernment Exhibit 14 marked for identification.)

24

25

sir.

THE WITNESS: Yes, sir. I went into the hospital,

1:

e

3

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Sir, I show you Government Exhibit 14. Do you recognize it?

A Yes, sir.

Q What do you recognize it to be?

A A sase for Apartment 18-C.

Q And did you enter into that lease on behalf of the Westerly?

A Yes, sir.

Q And with whom did you enter into that lease?

A With Bennie Hines.

Q I show you, sir, Government's 15 for identification.

Do you recognize that?

A Yes, sir. That's the application that I made out.

Q And when you say an application, can you tell us what function that application serves?

A Yes, sir. I take information from the prospective tenant and put this down here.

Q Do you specifically remember making out that application?

A Yes, sir. My name is on it.

Q And from whom did you receive the information thereor?

A From Bennie Hines.

MR. PADGETT: Your Honor, at this time I would offer Government's 14 and 15 previously received for identification

1

2

3

5

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

in evidence.

THE COURT: Have you received them, Mr. Gallop?

MR. GALLOP: No objection.

THE COURT: Mark them.

(Government Exhibits 14 and 15 received in evidence.)

Sir, I address your attention -- ask you to address your attention to Government Exhibit 15 which indicates "Business Address." Would you tell us what that business address is, please, sir?

3002 -- I can't read my own writing.

THE COURT: Cadillac Avenue, isn't it?

THE WITNESS: Cadillac Avenue, yes, that's what it looks like, Detroit.

Sir, I direct your attention to Government Exhibit 1, which is a photocopy of a driver's license.

THE COURT: No, no, we don't need him on this. You can make that argument to me that -- they are in evidence.

Sir, I direct your attention to this line which indicates annual income.

THE COURT: I saw it. It is \$25,000. Reading it doesn't add a thing to it. It is already in evidence. CROSS-EXAMINATION

BY MR. CALLOP:

Mr. Kreitzer, referring to the application, did you

23

24

Kreitzer-direct

egs

2

3

5

6

fill this application out or did Mr. Hines fill it out?

- A I filled it out.
- Q When did you fill it out?
- A When he came in for the apartment.
- Q And the information contained thereon, how did you get that information?
 - A From him.
- Q I see. And so everything that's marked down here is information which Mr. Hines gave you?
 - A That he gave me, yes, sir.
 - Q And did you check any of this information out?
 - A No, sir.
- Q I see. What is the purpose of determining the business or employer?
- A Well, that was the practice of the company to do it that way, and I followed the instructions.

MR. GALLOP: No further questions.

THE COURT: Tell me, what was the first month he occupied 18-C?

THE WITNESS: I would have to look at it, Your Honor.

MR. PADGETT: Excuse me, Your Honor. I think that

evidence will be introduced by another witness.

THE COURT: All right. Anything else, Mr. Padgett?
MR. PADCETT: Nothing, sir.

8

7

9

11

12

14

15

17

18

19

21

22

23

	A 50a
1	egs - 74
2	THE COURT: All right, thank you, Mr. Kreitzer.
3	You may be excused.
4	(Witness excused.)
5	MR. PADGETT: The Government would call Harry Gregory
6	to the stand.
7	HAROLD GREGORY, called as a witness by
8	the Government, was duly sworn and testified as follows:
9	DIRECT EXAMINATION
10	BY MR. PADGETT:
11	Q Mr. Gregory, what is your address?
12	A 72 Fifth Avenue, New York City.
13,	Q What is your occupation, sir?
14	A Manager of Engelman & Co., real estate firm at that
15	address.
16	Q For how long have you been so employed?
17	A The past eleven years.
18	Q As the manager of Engelman & Co., are you familiar
19	with the record-keeping procedures of and the records maintain
20	by Engelman & Co.?
21	A By Engelman & Co., yes.
22	Q Now, Engelman & Co. manages properties, I take it?
23	A Vec

And one of the properties managed by Engelman is

333 East 34th Street, New York City? 25

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

VICTOR QUADRI, called as a witness by the

Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. PADCETT:

- Q Sir, by whom are you employed?
- A Chemical Bank.
- Q In what capacity, sir?
- A Representative of the bank.
- Q When you say a representative, is it part of your duties to appear in court when certain records of Chemical Bank have been subpoensed?
 - A That is true.
 - Q Are you familiar with the records of Chemical Bank?
 - A Yes.
- Q Do you have certain original documents of Chemical Bank with you today?
 - A I do.
- O And from whom or from what location did you receive these documents?
 - A From one of our branches.
 - Q Which branch is that, sir?
 - A 85th.

THE COURT: Where is it?

THE WITNESS: I'm sorry, sir. Offhand I don't know.

A 52a Quadri-direct

egs

1

2

3

4

5

6

7

THE COURT: Does it say on it?

THE WITNESS: It is in New York City. Your Honor, the address of the branch is not on this, Your Honor.

Q Sir, do you know if Chemical Bank was subpoensed to produce certain original records here?

A They were.

Q Do you know if Chemical Bank received a subpoena directing them to produce certain original records?

A They did:

Q Are you here in response to that subpoena?

A I am.

Q Can you tell us what original records you have produced?

A I have the opening card of a savings account and also the ledger card of this same savings account.

MR. PADGETT: May I see them, please.

MR. CALLOP: Your Honor, the Government advises me these documents are under the name of one Charles Daniel with a signature on it that obviously differs from the handwriting of my client.

MR. PADGETT: I wouldn't consent to that.

MR. GALLOP: The note I make is that the Government advises me they are going to try to connect this to my client.

I will not object to their admission as business records, but

8

10

11

13

15

14

16

17

18

19

20

21

22

23

24

3

4 5

6

7 8

9

10 11

12

13

14 15

16

17

18 19

20

21 22

23

24

25

Quadr	i-d	ire	ct

only subject to connection if it can be connected.

THE COURT: Yes, subject to a motion to strike if not connected.

MR. PADGETT: At this time then, Your Honor, I would offer this original signature card and an original ledger card as Government Exhibits in evidence subject to connection.

(Government Exhibits 18 and 19 marked for identification.)

MR. PADGETT: Your Honor, I have been advised by the witness that Checmial Bank requests that we receive in lieu of the originals photocopies thereof. I would ask counsel if he has any objection.

MR. GALLOP: No objection.

THE WITNESS No objection?

THE COURT: Have we got already a photocopy?

THE WITNESS: I have one.

THE COURT: All right. Why don't we mark a photocopy and not mark the original.

THE CLERK: These are received in evidence, Your Honor?

THE COURT: Yes, subject to connection as just stated on the record.

(Government Exhibits 18 and 19 received in evidence.)

THE COURT: Fishibit 18 is what?

A 54a Quadri-direct

egs

MR. PADGETT: The signature card, Your Honor.

And 19 is the ledger card.

THE COURT: Well, the witness characterized one document as a savings account opening card. Now, is this document, Exhibit 18, what you call the savings account opening card?

THE WITNESS: Yes, Your Honor.

THE COURT: All right.

He called it a savings account opening card. That is Exhibit 18.

And you called Exhibit 19 a ledger card?

THE WITNESS: Yes, Your Honor.

THE COURT: All right.

Are counsel able to determine what is the time covered by these documents?

MR. GALLOP: I believe it is 1967, Your Honor. The application is dated September 18, 1.967 and the entries are all dated for the year '67.

THE COURT: The first entry seems to be September 18, '67. But there are handwritten notations in '71, '73 and '74. I don't know what they mean.

MR. GALLOP: Your Honor, I will look at the photostat.

THE COURT: Do the dates mean anything, Mr. --

MR. PADGETT: I will inquire of the witness, Your

5

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

egs

Honor.

BY MR. PADGETT:

- Now, sir, on Exhibit 19 there are certain deposits Q and withdrawals posted, are there not?
 - Right.
- And there are certain interests posted and a total 0 balance posted; is that correct?
 - True. A
- Do you know, sir, if the amounts shown as withdrawls are deducted from the amount shown as a balance and a new balance is struck?
 - Yes. I'll read it off to you if you wish.

On September 18 there was a deposit --

THE COURT: No, I don't think we need to have it read. It is in evidence.

- The final entry is 1974; is that correct? Q
- March '74. A
- And does that show a zero balance? Q
- A. Zero balance.
- And would that indicate that the balances were Q reduced by the amounts of withdrawals?
 - True, yes.
- And is there a notation the account was closed Q 3/26/74?

A	563
	Quadri-direct

egs

1

2

3

4

5

6

7

8

A That is correct.

Q Is it a fair statement, then, sir, this shows all the transactions for this account from the period of opening to the period of closing?

A Yes, it does.

Q Would that be the period September '67 through March '74?

A That's right.

MR. PADGETT: Thank you very much.

THE COURT: Any questions, Mr. Gallop?

MR. CALLOP: No, Your Honor.

THE COURT: All right, thank you, Mr. Quadri. You may be excused.

And you have the photostats?

MR. PADCETT: Yes, sir, I do.

(Witness excused.)

MR. PADGETT: Your Honor, may we call Special Agent Al Klass to the stand.

ALFRED S. KLASS, called as a witness by the Government, was duly sworn and testified as follows:

BY MR. PADGETT:

DIRECT EXAMINATION

Q Agent Klass, would you tell us your occupation, please?

9

10

13

14

12

15

17

18 19

20

21

23

24

egs

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

I am presently an internal auditor for the State of Florida.

- For how long have you been so employed? Q
- Since September of 1973.
- Prior to that time, sir, what was your occupation? Q
- A I was a special agent with the intelligence division of the Internal Revenue Service.

(Covernment Exhibits 20 and 21 marked for identification.)

- Agent Klass, I show you Covernment Exhibits 20 and 21 for identification and ask you if you recognize them?
 - Yes, I do. A
 - What do you recognize them to be, sir? Q
- Exhibits 20 and 21 are copies of letters, they are called "When and Where" letters that were sent to Mr. Bennie Hines, 300 West 55th Street, New York, New York, on May 1, 1973.
 - At whose direction were these letters sent out? Q
- These letters were sent out at my direction, because I was in charge of the case at that time.
 - And was there any return made on these letters? Q
 - No, I never received returns on these letters. A
 - Sir, you --Q

THE COURT: What do you mean by returns? You said

24

you never received "returns."

3

2

1

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18 19

20

21 22

23

24

25

THE WITNESS: That is correct, Your Honor. I sent the originals of these copies to Mr. Hines for him to fill out the back of these -- the backs of these two forms which would tell us when and where he filed his 1970 and 1971 year tax returns.

THE COURT: You mean that you never got the originals of these documents back?

THE WITNESS: That is correct, Your Honor.

THE COURT: And these papers that you have in front of you are copies?

THE WITNESS: That is correct, Your Honor.

THE COURT: Sent through the mailes?

THE WITNESS: That is correct.

THE COURT: To the addressee?

THE WITNESS: That's right.

THE COURT: And the post office never returned them?

THE WITNESS: That is correct.

THE COURT: And the addressee never returned them, you never got them back?

THE WITNESS: That's right.

THE COURT: All right, now I understand.

Did Mr. Hines make any reply to you? Q

No, he never replied to me in connection with these A

two letters.

3

8

9

10 11

12

13

14 15

16

17

18

20

19

21

22 23

24

25

Klass-direct

MR. PADGETT: At this time, Your Honor, I would offer Government Exhibits 20 and 21 for identification .--

MR. GALLOP: No objection.

MR. PADGETT: -- in evidence.

THE COURT: Mark them.

(Government Exhibits 20 and 21 received in evidence.)

MR. PADGETT: I have no further questions.

CROSS-EXAMINATION

BY MR. GALLOP:

Mr. Klass, when did you leave the Internal Revenue Service?

I retired from the Internal Revenue Service as of June 30, 1973.

- Now, you say you were in charge of the investigation in this matter; is that correct?
 - That is correct, sir.
 - And can you explain what you mean by that? Q.

Well, I gave instructions to the various agents who were assisting me at the time in connection with the investigation of Mr. Hines.

- So you sort of managed this investigation? Q
- That is correct, sir. A
- And when you say "this investigation," specifically Q

A 60ª Klass-cross

egs

1

2

3

5

6

7

what are you referring to, what was the investigation you were in?

A Well, the investigation was in connection with Mr. Hines' income tax liability for the years 1970 and 1971.

Q Well, according to these letters, they indicate that there is no record of the filing of the tax return?

A That is correct.

Q For the years 1970 and 1971?

A That is correct.

Q Was that the entire scope of your investigation?

A No, that was only one phase of it. In other words, we were out to establish whether or not the taxpayer had filed tax returns for those two years.

Q I understand that. Was there anything else, any further scope of your investigation, besides the years 1970 and 1971?

A You mean in addition to those two years?

Q Right.

A You would want to know whether we had more than those two years under investigation?

Q That is correct.

A At this time I don't recall whether we had any more years than '70 or '71 under investigation.

Q Well, did you ever send him a letter indicating --

8

10

11

13

12

14

15

16

17

18

19

21

22

23

24

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Withdrawn.

Did you ever send him a letter similar to these two letters but indicating that the year in question was the year '67, '68 or '69?

- It is possible, but I don't recall.
- Well, did you search your records and produce these two letters?

MR. PADGETT: The Government will stipulate that no other letters were sent by Agent Klass or at his direction.

THE COURT: Does that meet your point?

MR. GALLOP: Yes. I assume also the Government would stipulate no such letters were sent for the year '72; is that. correct?

MR. PADGETT: Yes. These are the only letters sent by Agent Klass or by an agent acting at his direction, letters of this type.

BY MR. GALLOP:

- Now, aside from the letters which were sent out, was there any other inquiry made by you into the years '67, '68 or '69?
- MR. PADGETT: Your Honor, I am sure it is understood we are talking about a period prior to the agent's departure

MR. GALLOP: Yes.

No, I don't recall any other years than 1970 or 1971

A 623 Klass-cros

egs

2

3

4

5

6

7

8

9

10

11

12

13

14

Q Now, when did you not retire from the service but retire or resign from the management of this particular case; did that coincide with your retirement?

A Yes, I would say so.

Q So you had this case up until approximately June of 1973?

A Well, my last working day was sometime at the end of June.

Q '73?

A Oh, yes.

Q And when was this matter assigned to you?

A I can only guess right now. I have no records in front of me but I would say this case was assigned to me a number of months prior to the end of June '73.

MR. GALLOP: Does the Government have any records in its possession that might help Mr. Klass?

MR. PADGETT: The Government has no records in its possession.

Q When you say a number of months, so I can understand what you mean, do you mean six months, or --

A It could be in the area between four to six months.

Q In that four to six month period can you tell me what else you did aside from sending out these two letters inquiring about the year 1970 and 1971?

15

17

16

18

20

21

22

24

24

A We were in the process of reconstructing Mr. Hines' income tax liability, and there were a number of leads that we had to follow through in order to reconstruct his income for those two years.

- Q All right, my question was, when you said you were in the process of reconstructing his income and income tax liability, for what years are you referring?
 - A Well, certainly for the years 1970 and 1971.
 - Q For any other years?
 - A The other years I don't recall.
- Q Now, in attempting to reconstruct Mr. Hines' income for the year 1970, can you tell us what you did?

A Well, we had a number of leads that we had to develop along the lines of the cost of living expenses. Those we had third parties contacted, we secured the necessary documentation to establish the fact that certain expenses were incurred: and spent, which all went into his cost of living for those two years.

- Q As I understand your testimony, are you stating that during the years -- during the course of your investigation for the years 1970 and 1971, what you were attempting to do was to establish Mr. Hines' cost of living?
 - A That is correct, sir.
 - Q And you were doing that by tracking down leads as to

A 64a Klass-cross

egs

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

various expenses?

- A That is correct.
- Q Would that be similar to rent?
- A Right.
- Q Automobile expenses?
- A Right.
- Q And was it the purpose of your investigation to attempt to establish his income based upon his cost of living expenses?
 - A That is correct, sir.
- Q And can you tell us, as best you recall, specifically for the year 1970, the nature of the leads that you developed and checked out in order to establish this?
- A At this moment, I cannot be too specific, because the last time I saw the files, the office files, was just prior to my retirement. So therefore I cannot give you any specifics.
- Q Well, as best you can recall, you were in charge of this investigation?
 - A That is correct.
 - Q And this took place during the year 1973?
 - A That is correct.
 - Q So as best you can recall.
 - A Well, would you want names and amounts?
 - Q Well, not specific amounts but certainly names and the

25

nature of the leads.

A Well, the nature of the leads would be along the lines of cost of living expenses. But I cannot tell --

Q I gave you an example. I don't know if that is the fact that you did, rent, for example, did you check his rentals?

A We checked rentals, we checked auto purchases -- you see, you must remember that it wasn't Mr. Hines who was under investigation, I think there were eight other similar tax-payers, and what went for one -- what type of investigation went for one, it may have been a little different in the case of Mr. Hines.

Now, when you ask me to enumerate the types of expenses in the case of Mr. Hines, I can't do it unless Ihad the files in front of me.

- Q Mr. Klass, I understand that. Perhaps to better understand what I am driving at, you say you tracked down leads to establish cost of living expenses of Mr. Hines. Can you tell me what else you did during the course of your investigation?
 - A You mean besides running down leads?
 - Q To establish cost of living expenses, that is correct.
 - A I can't think of anything else at the moment.
- Q So is it your testimony that the investigation in
 1973 consisted of tracking down leads to establish the cost of

A 663 Klass-cross

egs

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

living of Mr. Hines and sending out the two letters?

MR. PADGETT: I will object to that, Your Honor.

THE COURT: I will overrule the objection.

A I think you mentioned '73. Insofar as -- you mean the year '73, you mean during the year?

Q No, no, the investigation took place during 1973; is that correct?

A That is correct. Covering the years '70 and '71.

Q Right.

A Right. Up until the time I was there, Mr. Gallop, the only thing that I was conscious of ever doing was developing cost of living and possibly net worth leads, which would be all in the same -- part of the same grouping.

Q In other words, expenses?

A Expenses, right.

Q Expenditures?

A Right.

Q Of the defendant?

A That is correct.

Q Now, when you say you were aware -- when I talk of "you," I mean you or anybody under your control as the agent in charge of this investigation, was anything else done with regard to Mr. Hines?

A Insofar as income taxes are concerned?

24

1	A 67a egs Klass-cross 99
2	Q Yes, insofar as the income taxes.
3	A No more than what I have just said.
4	MR. GALLOP: I see. I have no further questions.
5	THE COURT: Anything else?
6	MR. PADGETT: No; thank you, sir.
7.	THE COURT: All right.
8	(Witness excused.)
9	
10	MR. PADGETT: The Government calls Special Agent
	Clarke to the stand, please.
11	JOHN CLARKE, called as a witness by the
12	Government, was duly sworn and testified as follows:
13	DIRECT EXAMINATION
14	BY MR. PADGETT:
15	(Government Exhibit 22 marked for identification.)
16	Q Agent Clarke, you are a special agent with the
17	Internal Revenue Service, are you not?
18	A Yes, sir.
19	Q Sir, I show you Government Exhibit 22 for identifi-
20	cation and ask you if you recognize it.
21	A Yes, I do.
22	Q What do you recognize it to be, sir?
23	A This is an appointment letter sent out to a taxpayer
24	Q Did you send that out?
25	A Yes, I did.

1	egs	A 684 Clarke-direct	100	
2	Q	When was it sent out?		
3	Α .	September 24, 1973.		
4	Q	To which taxpayer was it sent out?		
5	. А	Addressed to Bennie Hines.		
6		MR. PADGETT: Your Honor, at this time I would		
7	offer 22	for identification as 22 in evidence.		
8		MR. GALLOP: No objection.		
9		THE COURT: Mark it.		
10		(Government Exhibit 22 received in evidence.)		
11		MR. PADGETT: No further questions.	7	
12		THE COURT: Any cross?		
13	CROSS-EXAMINATION			
14	BY MR. GA	ALLOP		
15	Q	Mr. Clarke, do you have any indication that the		
16	letter w	nich was just submitted in evidence was received?		
17	Α	I don't have any evidence. I have to assume it	was	
18	received	since I didn't get it back.		
19	Q	It just was not returned to you; is that correct	?	
20	A	Correct.		
21	Q	And the letter was mailed September 24, 1973; is	3	
22	that correct?			
23	A	That is correct.		
24	. Q .	Are you aware of a letter mailed to the defendar	nt	

November 16, 1973 by the Department of the Treasury, District

3

4

5

6 7

8 9

10

11 12

13

15

14

16

20

22

21

23 24

25

Director, Chief Intelligence Division, Manhattan?

- I know one was sent; I don't know the date of it.
- I show you a photostat. Q

MR. GALLOP: Do you have the original?

- I show you a photostatic copy. Is that the letter Q you were referring to?
 - It is the one that you talked to me about; yes, sure.
- Yes. And this letter was addressed to the defendant Q at 300 West 55th Street, which is the same address that the correspondence that you sent was addressed to; is that correct?

A Yes.

MR. GALLOP: I'd like these marked for identification.

MR. PADGETT: The Government will stipulate that the items marked for identification are true and correct photocopies.

THE COURT: Do you want to offer them?

MR. GALLOP: I will offer them in evidence.

THE COURT: Any objection?

MR. PADGETT: No objection.

THE COURT: All right, mark them in evidence.

(Defendant's Exhibit C received in evidence.)

- And this letter, as I noted before, I believe I noted Q before, was marked "certified mail, return receipt requested"?
 - A Yes.
 - And were you made aware that the letter was returned Q

A 703 Clarke-cross

egs

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

"Moved, left no address"?

A Yes, sir.

Q Did you attempt to obtain a new address for the defendant?

A At that time, no.

Q When you say at that time, do you mean in November of 1973?

A Right, sir.

Q When was the first time that you attempted to find a new address for the defendant?

A Well, we didn't attempt to find new addresses, other than we knew he was at various addresses, and when we received it back, it just said he wasn't there, and we just -- the case had been completed as far as we were concerned.

Q Did you mail any letters to the defendant at any other address?

A No, sir.

MR. GALLOP: No further questions.

THE COURT: All right, anything else?

MR. PADGETT: Yes, sir.

REDIRECT EXAMINATION

BY MR. PADGETT:

Q Agent Clarke, in November of 1973, how many addresses had your investigation located which at one time or another had

2

16

17

18

19

20

.21

22

23

24

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

been connected with the defendant?

- A I would say four or five.
- Q And do these four or five addresses overlap in time and in place?

A Yes, sir.

MR. PADGETT: No further questions.

RECROSS EXAMINATION

BY MR. GALLOP:

- Q To clarify that, in November 1973, how many addresses did you know the defendant to have?
 - A Four or five.
- Q Four or five? Excuse me. In November of 1973, how many addresses did you know the defendant to have?
 - We had him at 300 West 55th Street.
 - Q But the envelope was returned?
 - A Oh, yes.
 - Q Did you have any other addresses for him?
 - A No.
- Q No other addresses? I am somewhat confused. You said four or five addresses.
- A Right. We had him at 400 East 77th Street, I'm not sure if that was November.
 - Q Did you mail anything to that address?
 - A No.

A 72a Clarke-recross

egs

1

2

3

4

5

7

8

9

10

11

12

13

14

15

16

17

18

Q What other addresses?

A 250 West 15th Street.

Q Did you ever mail anything to that address?

A No, sir.

Q Any other addresses?

A Offhand I can't think of any.

MR. GALLOP: No further questions.

THE COURT: Anything else?

MR. PADGETT: No, sir.

THE COURT: All right, thank you, Mr. Clarke.

(Witness excused.)

THE COURT: Is this as good a time as any to stop?

MR. PADGETT: Yes, sir, I think so. There are a rather large number of stipulations which I believe can be entered into and if we can ask for an extended lunch hour perhaps counsel and I could go over these stipulations, although they have been reviewed, enter into them formally and advise Your Honor of that.

THE COURT: All right. How long do you want to take?

MR. PADGETT: Well, Your Honor, there are relatively few, and I use the term advisedly, "business" witnesses who remain. In fact, there are only two, and one of them may be stipulated to. The remaining witnesses for the Government would then be law enforcement personnel or individuals whose

19 20 21

23

22

24

1

2

4

5

6 7

8

9

10

11

12 13

14

15 16

17

18

19 20

21

22

23

24

25

AFTERNOON SESSION 2:30 p.m.

MR. PADGETT: Good afternoon, Your Honor.

THE COURT: Good afternoon.

Now, before I forget it, let me tell you about We will have to stop at 12:15.

> Mr. Gallop, you want to start at 10:00 tomorrow? MR. GALLOP: That is correct.

THE COURT: That's certainly all right. So we will start at 10:00 and we will go to 12:15. And I will try to be back by two o'clock. I may be a few minutes late. You will have to forgive me. And tomorrow we will have to stop at five o'clock. So that we probably will have to go over until Wednesday, but that doesn't make any difference.

Now, wait, Thursday. It will be Thursday, of course I lost track.

All right, Mr. Padgett.

MR. PADGETT: Your Honor, at this time counsel and I have entered into certain stipulations which I would like to enter into the record if I may.

As Government Exhibit 23, there is a stipulation --I don't think it is necessary for me to read them, is it, Your Honor?

THE COURT: No, because I will get the exhibit.

MR. PADGETT: Government Exhibit 23 is a certain

2 stipulation.

(Government Exhibit 23 received in evidence.)

MR. GALLOP: May I see that so I can mark my copy with the same exhibit number.

MR. PADCETT: Subsequent to the stipulation, the

Government would offer into evidence as Government Exhibit 24

THE COURT: Now, wait, Mr. Clerk, does the record show that Exhibit 23 has been admitted into evidence?

THE CLERK: Yes.

MR. PADGETT: The Government woul. offer as Government Exhibit 24 three pieces of paper which are in receipt from the Social Security Administration. I would offer them collectively, Your Honor, as 24.

THE COURT: I take it these are not objected to.
This is a stipulation, too?

MR. GALLOP: That is correct, Your Honor.

THE COURT: All right.

(Government Exhibit 24 received in evidence.)

THE COURT: Now, Mr. Padgett, just so I can be clearer, would you tell me, and Mr. Gallop can say anything he wants to say, what is the significance of this? I take it that -- let me tell you my offhand theory and you can both correct me -- I take it that these are names on searches which have been used along with Bennie Hines --

. .

MR. PADGETT: No, Your Honor is quite right in pointing that out. It is something that slipped by both counsel and myself. When we applied to the Social Security Administration for certain records, they came back with a single certificate which talks in terms of three individuals. The Government does not claim that two names utilized there, that is to say James Lewis and James Miller, they bear no relationship whatever to Mr. Hines, and upon offering all the stipulations, Your Honor, I would ask the Court's permission to introduce a Xeroxed copy of that certificate with the names Lewis and Miller stricken. They bear no relation to the defendant at all.

THE COURT: Nothing to do with this case?

MR. PADGETT: No, sir.

MR. GALLOP: That is correct.

THE COURT: All right. Now, while I'm at it, I ought to ask, if Mr. Hines, the defendant, never had any legitimate employment, I understood this morning, how would he get a Social Security Number?

MR. PADGETT: Well, employment is not a prerequisite for obtaining a social security number. One obtains a social security number almost as a matter of course. I can cite my own example. I obtained my social security number prior to obtaining a position when I was 18 years of age. But if

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Your Honor will note in one of the papers, in the last exhibit, there is a record of legitimate income received by Mr. Hines in the years 1971, '62, I believe, for three years, a minimal income, concededly earned in --

THE COURT: Wait a minute. That's Exhibit 23?

THE CLERK: 24.

MR. PADGETT: The second page, Your Honor, shows --

THE COURT: Oh, you mean that this shows that under

I take it that the real name of the defendant is Bennie Hines?

MR. PADGETT: Yes, sir.

MR. GALLOP: That is correct.

THE COURT: And Bennie Hines is shown here at one point to have had employment by somebody in the years 1960, 1971 through -- well, through 1962, which resulted in some earnings?

MR. PADGETT: Yes, sir.

THE COURT: And therefore as a result of those earnings, he got a social security number?

MR. PADGETT: The Government isn't prepared to state whether as a result of the earnings or prior to being employed he applied for a social security number. There is not necessarily a connection between earnings and social security number. You may apply for a social security number being totally unemployed.

THE COURT: Yes, I made a note of that. And I was surprised to learn not long ago that my mother has a social security number and she has never been employed in her life. I don't know how she got it.

A social security number has nothing to do with employment?

MR. GALLOP: No, Your Honor.

MR. PADGETT: It need not.

It is needed for Medicare or Medicaid also.

THE COURT: You mean if you are eligible for Medicaid or Medicare --

MR. GALLOP: You must first obtain a social security number because I think the computers work by the number, the social security number, so that it would require you to obtain a social security number so when you apply for Medicare and Medicaid they use the number as a form of identification.

THE COURT: So if you apply for Medicare or Medicaid then they either get you a social security number or ask you to get one?

MR. GALLOP: I believe so

THE COURT: All right, but this is to establish that as long ago as 1970, the defendant had a social security number?

MR. PADGETT: Yes, sir, and in '60, '61 and '62 he had an income, although concededly it was a minimal one, and

2 | +1

thereafter the records show he had no income up to the present.

THE COURT: All right, I understand.

MR. PADGETT: The Government would offer as Government Exhibit 25 in evidence a certain stipulation that the fact that there is no record of New York State Income Tax Bureau of the defendant having paid taxes in the State of New York.

THE COURT: This would be on the issue of wilfullness?

MR. PADGETT: Yes, Your Honor.

(Government Exhibit 25 received in evidence.)

MR. PADGETT: The Government would offer as Government Exhibits in evidence 26, 27, 28 and 29, which are certain stipulations to the effect that the records of surrogates courts in the five metropolitan counties of New York were searched and there is no record of inheritances found for Bennie Hines.

THE COURT: This is the point we had yesterday, Mr. Gallop?

MR. GALLOP: That's right.

THE COURT: That we talked about. In other words, you said that it it not meaningful because inheritances or gifts from some other part of the world, any part of the United States --

MR. GALLOP: Correct.

(Government Exhibits 26, 27, 28 and 29 received in evidence.)

THE COURT: Will these actually relate just to inheritances?

MR. PADGETT: Yes, sir.

THE COURT: All right.

MR. PADGETT: We would offer as Government Exhibit

30 a certain stipulation to the effect that if certain revenue
agents were called they would testify that they had searched
the grantee-grantor indexes of the five metropolitan counties
and found no record of transfers to or from Bennie Hines of
real property.

THE COURT: These are the real estate records that we talked about yesterday?

MR. GALLOP: That is correct.

(Government Exhibit 30 received in evidence.)

MR. PADGETT: Your Honor, Government Exhibit 31 in evidence would be a certain stipulation to the effect that if a representative of the New York Bank for Savings were called he would testify as to various business records maintained by the New York Bank for Savings and testify to the purpose of those records.

THE COURT: All right, without objection it will be received.

(Government Exhibit 31 received in evidence.)

THE COURT: Give me just a moment to look at it.

This leads up to 32.

MR. PADGETT: Yes, sir. I would offer Government Exhibit 32, which is a certain signature card in the name Bennie Hines with certain other pertinent data thereon.

(Government Exhibit 32 received in evidence.)

THE COURT: Is the social security number shown on this exhibit the same as shown on the records that the search division supervisor testified about this morning?

MR. PADGETT: Yes, sir. It is the same number that the supervisor from Brookhaven testified to, as well as the same number that was searched by the Social Security Administration and is certified to on Government Exhibit 24 in evidence.

THE COURT: All right.

MR. PADGETT: Your Honor, the Government proposes to enter into an oral stipulation at this time, which is in the nature of an addendum to the written stipulation in Your Honor's hand that if a representative of the New York Bank for Savings were called he would testify that he had been shown Government Exhibit 33 and Government Exhibit 33 is a record maintained in the ordinary course of business by the New York Bank for Savings and that it is the ordinary course of business

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

for the New York Bank for Savings to make the entries thereon at the times indicated on Exhibit 33, and that the purpose of Exhibit 33 is to record the transactions on a particular account from the day of opening of that account to the date of preparation of this ledger and transaction sheet.

This exhibit was received today, Your Honor. That is why it is not in the written stipulation.

MR. GALLOP: No objection.

MR. PADGETT: Counsel, would you ask your client on the record if he would consent to that stipulation?

THE COURT: Wait, if Madam Reporter is to take this down, you have to make it audible to her.

MR. GALLOP: No objection, Your Honor.

THE COURT: Yes, but the Government wants some statement by Mr. Hines. Do you want to ask him in a voice that Madam Reporter can hear?

MR. GALLOP: Mr. Hines, do you agree to stipulate that if a representative of the New York Bank for Savings would come to court to testify that he would testify that this is a record kept in their regular course of business pertaining to the account that you signed the signature card on?

> THE DEFENDANT: Yes.

MR. GALLOP: He answered yes, Your Honor.

2 no objection. I don't think this procedure is proper because 3 it may place my client in a position of having to acknowledge certain documents or the existence of certain evidence, and it 5 might create a problem. But in this particular case I have no objection. I would think in the future, if the Government

wants some consent, I can simply sign the stipulation.

MR. PADGETT: Your Honor, none of the stipulations I think -- counsel has never consented rather to truth of any of these stipulations, merely that if the witness were called.

THE COURT: Yes, I agree. There is a problem here. I think Mr. Gallop is right.

MR. PADGETT: This is the only document of that type, Your Honor. It was received this morning.

THE COURT: All right, now may I see it?

MR. PADGETT: I would now offer as Government Exhibit 33 the document referred to in the stipulation.

THE COURT: Without objection it will be received.

(Government Exhibit 33 received in evidence.)

THE COURT: This is what we call a ledger card?

MR. PADGETT: Yes, showing transactions from the opening date, date of preparation, which was September '73.

THE COURT: While I am looking at it, Mr. Padgett, would you and Mr. Gallop tell me -- you needn't argue its significance -- but what's N/A, the first transaction seems

6

8

7

9

10

11 12

13

14 15

16

17

18

20

21

22

23

24

4

5

6

7 8

9

10

11

12

13 14

15

16

17

19

18

20

21 22

23

24

25

to be October 4, 1967, N/A. What does that mean?

MR. PADGETT: Are you referring to the third line, Your Honor?

THE COURT: Yes.

MR. PADGETT: BDN/A. I don't know what significance We are not claiming it has significance. It may be the initials -- I have no idea what the significance is.

THE COURT: It is a \$10 deposit; is that right?

MR. PADGETT: \$10 opening deposit, posted in 1967.

THE COURT: Tell me, what is the relevance of this, or the significance?

MR. PADGETT: Your Honor, it has two points in significance. One is it is an accompanying document to the signature card and secondly, I think Your Honor will see from further contents that the New York Bank for Savings was listed as a reference by individuals who utilized apartments -- by.Mr. Hines, I should say. Secondly it goes to the question of whether or not the defendant had cash in his bank accounts which would have accounted for the expenditures made by him. The Government here shows that in a bank referred to by him as a reference, he had a mere \$10 in that account. That, therefore, could not be the source of his expenditures. That's one element of disputing the cash hoard theory.

THE COURT: Well, on the first, it might be

1 egs

persuasive. On the background I should think it would be a pretty light weight, because he might have accounts of any number of other matters.

MR. PADGETT: That's entirely true. Of course, it would be the Government's position that all we can do is search for the banks that we know of. We are not required I think by law to make a search of each and every possible source of income.

THE COURT: All right.

MR. PADGETT: Your Honor, the Government would next offer into evidence a stipulation concerning testimony of one Jerry Copito to the effect that he is the manager of a real estate corporation, Malohn Properties, Inc., and it would serve to introduce certain leases concerning an apartment at 400 East 77th Street. The stipulation is that he would be familiar with the business records procedure of Malohn.

(Government Exhibit 34 received in evidence.)

THE COURT: This, according to the Government, ties in with the first witness about the 400 East 77th Street

apartment?

MR. PADGETT: That is correct, with Mr. Pedreira's testimony. Mr. Pedreira works for Mr. Copito.

The Government would offer as Government Exhibit 35 in evidence a certain lease concerning 400 East 77th Street.

21 22

2

5 6

7 8

9

10 11

12 13

14

16

15

17

18

19

21

20

22

23 24

25

As Government 36 an application for that particular apartment previously received as Defendant's B for identification only. As Government 37, a second lease for that particular apartment. And Government 38, the application for that leasehold previously received as Defendant's A for identification.

All of these pertain to the single apartment at 400 East 77th Street which was testified about by Mr. Pedreria.

THE COURT: Madam Reporter, would you mind reading me the last statement of Mr. Padgett?

(Record read.)

(Government Exhibits 35, 36, 37 and 38 received in evidence.)

MR. PADGETT: Your Honor, I would offer as Government Exhibit 39 a certain stipulation to the effect that if a Seymour Detsky, D-e-t-s-k-y, were called, he would testify that he is an attorney and represented Mr. Hines in a landlord tenant matter in 1972 concerning Apartment 4-E at 400 East 77th Street, and that at Mr. Hines' direction sent certain Western Union -- excuse me, American Express money orders in the sums indicated to Mr. Jerry Copito, the managing agent of that building.

(Government Exhibit 39 received in evidence.)

THE COURT: All right.

MR. PADGETT: The Government would offer as

Government 40 in evidence a certain stipulation that if Mary Vrettos were called, she would testify that she withdrew -- first that she is familiar with the business records procedure of American Express and that she withdrew certain items from the records of American Express. These items would then be offered as 41, 42 and 43 in evidence, being the original money orders referred to in Mr. Detsky's stipulation, that is to say, the money orders he sent to Mr. Copito at Mr. Hines' direction.

(Government Exhibits 40, 41, 42 and 43 received in evidence.)

MR. PADGETT: We would note of course that they are money orders made out in the name of Williamson.

THE COURT: And the Covernment believes apparently that 41, 42 and 43 represent payments on account of rent at 400 East 77th Street?

MR. PADGETT: That is correct, sir. That I believe is stipulated to in Mr. Detsky's stipulation.

The Government would then offer as Government

Exhibit 44 in evidence a certain stipulation to the effect that if called, a Mr.Newfield Freida Chaifetz and Eugene Perlstein, would testify to the effect that they are employed by Ace Pontiac, an automobile dealership in the Bronx, and that they have no knowledge of an employment of Ace Pontiac of Bennie

22 23

--

Hines. Mr. Nowfield being the president, Miss or Mrs. Chaifetz being the bookkeeper, and Mr. Perlstein being the service manager of Acc Pontiac.

(Government Exhibit 44 received in evidence.)

MR. PADGETT: The significance of that would be that Ace Pontiac was given as an employer.

The Government would then offer as Government

Exhibit 45 in evidence a certain stipulation by one Edna

Speaker to the effect that she is the secretary of the Atlantic Westerly Corporation and is familiar with the record-keeping procedures and the records maintained by the Atlantic Westerly Corporation, and that the Westerly Corporation manages an apartment building known as the Westerly at 300 West 55th

Street. That stipulation would serve to introduce Government Exhibits 14 and 15 which have been previously received and also to the effect that certain sums of money were received as set forth in the schedule as rent for that particular apartment mentioned in Government's 14 and 15.

(Government Exhibit 45 received in evidence.)

THE COURT: All right.

MR. PADGETT: The Government would then offer as

Government Exhibit 46 a certain stipulation that if a representative of the Department of Records of Wayne County, Michican, were called as a witness, he would testify that he has searched

19 .

the records of Wayne County and has attempted to locate a business in the City of Detroit, which is itself located in Wayne County, of an LBJ Booking Company, and could find no such record. The significance of that is that the LBJ Booking Company was a source of employment listed by the defendant on one of the applications introduced.

(Government Exhibit 46 received in evidence.)

MR. PADGETT: The Government would then offer as

Government's 47 a certain stipulation that if Abraham Alexander
and Philip Gregoli were called as witnesses, they would testify
they are officers of the Behl Printing Company and they have
searched the records of Behl and additionally they have been
shown photographs of Bennie Hines and they can find no records
nor do they find records of Mr. Hines' employment. The
significance of that is they are listed as employers in one
of Mr. Hines' applications.

(Government Exhibit 47 received in evidence.)

MR. PADGETT: The Government would then offer as

Government 48 in evidence a certain stipulation to the effect
that if Robert Rivkin were called, he would testify he is the
office manager of Simon Furniture, Inc. and that he is familiar
with the record-keeping procedure, that he recognizes Bennie
Hines as a customer of Simon Furniture and he would serve to
introduce certain records maintained by Simon Furniture to the

Œ

effect that certain purchases of furniture were made during the years in question by Bennie Hines.

(Government Exhibit 48 received in evidence.)

MR. PADGETT: Government's 49 through 59, inclusive, would be offered as the records identified by Mr. Rivkin as the records of the Simon Furniture Company which indicate that furniture of the types described on some of these exhibits and costing sums described on others of the exhibits were delivered to Mr. Hines or to his nominees at various addresses as well as the amounts received by Simon Furniture as payment for the items sold to Mr. Hines.

THE COURT: Were the apartments earlier mentioned all unfurnished apartments?

MR. PADGETT: There is no evidence in the leases,
Your Honor, that the apartments are furnished. I would assume
therefrom that they are unfurnished apartments. I should note
that the records do not reflect only those apartments which
have been mentioned so far at the trial. The records of Simon
rurniture indicate other addresses in addition to the ones
that the Government has introduced. All its records do show
furniture was delivered, for example, to individuals whose
names have been mentioned already;, for example a Sharon Heard
furniture ordered by Mr. Hines and delivered to Sharon Heard.
And thereafter paid for by Mr. Hines.

11.

(Government Exhibits 49 through 59 received in evidence.)

THE COURT: All right, give me a minute just to look through these.

The first of these exhibits to which I address your attention is Exhibit 49 and there is an original and apparently two photostats.

MR. PADGETT: Yes, sir. Just the original is being offered. The photostats are for Mr. Gallop's convenience and for my own. They should not have been handed to the Court.

THE COURT: All right. Why don't you take them back.

MR. PADGETT: I think you will find there is a similar problem with each of the other exhibits.

THE COURT: All right, maybe it is easier if you separate them afterwards.

MR. PADGETT: Only the originals are being offered.

THE COURT: I take it that these are offered only as to the expenditures of the defendant and his connection with physical premises?

MR. PADGETT: For those two reasons, yes, Your Honor, but in addition, any item which indicates or from which it could be reasonably assumed that the defendant had adopted an identity or a physical location other than the principal identity of the principal physical location, the Government

:18

feels would tend to support the theory of wilfullness under the Spies theory, attempts to conceal his presence or attempts to conceal his disbursement, we feel would tend to go toward wilfullness which is of course an element of the proof.

THE COURT: All right, tell me that again.

MR. PADGETT: Under Spies, wilfullness may be shown by attempts to evade Governmentscrutiny or in fact to evade scrutiny of any kind, the use of the false names, the use of cash as an expenditure, non-traceable expenditures, so to speak, and we would argue that the evidence which indicates that Mr. Hines had no real fixed abode, had no discernible and discoverable ties, but was using nominees as recipients of property, was using cash as a method of disbursement or money orders as a method of disbursement, all would support the conclusion that he wilfully attempted to avoid governmental surveillance, including the surveillance which would -- rather, including the filing of taxes which of course is a reporting to the government itself.

THE COURT: Well, we can go into that later, but if I understand these papers at which I have looked so far, they are all in his name, so that he isn't concealing his identity. It does show his connection with a number of apartments and presumably a number of women, and it does show his cash or dollar expenditures, but I don't think it shows

. 9

that he was going under an assumed name.

MR. PADGETT: No, that piece of evidence does not,
Your Honor. That would go towards the lack of fixed abode
and the inability of the government to pin him down, so to
speak. Other items which would be offered in the same vein
would show his use of fictitious names. You are quite right,
though, there are no fictitious names with Simon Furniture.

However, I do believe, Your Honor, that furniture was delivered under the name Bennie Hines to apartments where other evidence has shown that Bennie Hines lived under a fictitious name.

MR. CALLOP: Your Honor, I realize this is something we really should reserve for a later point, but I don't think the evidence shows that, I think it shows rent was paid on an apartment apparently by Mr. Hines, not that he lived there under a fictitious name. I don't know if the difference is worthy of any further discussion at this point.

THE COURT: Well, the only reason I am discussing it at this point is so that I can get an idea when I note --

MR. GALLOP: I assume the Government intends to introduce these items on the basis these were expenditures made by the defendant during the years in question.

THE COURT: I think it is more than that. I think it is to show that he was connected with apartments at which

he did not actually reside and therefore I would assume the Government would argue that this was part of his business operation. Am I right?

MR. PADGETT: That is correct, sir.

THE COURT: I am not passing on whether it supports that.

MR. GALLOP: I understand the Court's reasoning and I follow it. The last thing Mr. Padgett said puzzles me somewhat, too, and that was the question of showing the inability to pin down by flitting around from one place to the other. If it is apparent that these apartments were not his abode, then of course he was not moving from one place to the other. You can't have it both ways.

MR. PADGETT: The Government would then offer as

Government Exhibit 60 the stipulated testimony of Jim Lucas,

L-u-c-a-s, to the effect that he is the owner of a tailor shop

in New York City, that he recognizes the defendant and that

Mr. Hines purchased items of clothing from him at a cost of

approximately \$700 a year in the two years in question.

(Government Exhibit 60 received in evidence.)

THE COURT: All right.

MR. PADGETT: The Government would then offer as

Government Exhibit 61 the stipulated testimony of Ralph Byrd

to the effect that he does not know Bennie Hines, that he has

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

been shown a photograph of Bennie Hines and does not recognize 2 him, and that he, Mr. Hines -- Mr. Byrd, rather, never applied 3 for an apartment at 333 East 34th Street, nor did he ever pay rent there. Further, that he is associated or was associated 5 with a firm called Browlyrd Associates, and that Mr. Hines 6 was never employed by Browlyrd Associates. The significance 7 of that is, Your Honor, that Mr. Hines has been identified 8 as a tenant in that particular apartment on 34th Street and that apartment was rented in the name of Byrd. 1.0

THE COURT: Did any application signed by the defendant claim employment with this Browlyrd Associates?

MR. PADGETT: Yes, sir, I believe Covernment Exhibit

16 -- excuse me -- No, Your Honor, that item has not been
introduced into evidence as yet.

THE COURT: Will something be introduced in evidence on that?

MR. PADGETT: Yes, there will be an attempt to introduce that.

far, I think I'd be inclined to view the facts as being that
Ralph Byrd was a fictitious name, but to have somebody, perhaps
Byrd -- there may be Ralph Byrds -- to say that he doesn't know
the defendant -- But you say you are going to connect it in
another way?

only.

MR. PADGETT: Yes, sir.

THE COURT: To explain why the defendant may have picked out the name Ralph Byrd?

MR. PADGETT: The Government will attempt to give an amplification of that and give particulars of Mr. Ralph Byrd as he has stated on that stipulation.

THE COURT: All right.

(Covernment Exhibit 61 received in evidence.)

MR. PADGETT: Your Honor, rather than take everything out of sequence now I would offer Government Exhibit 62 for identification only, that is the stipulated testimony of Sonny Segalkin. I'm sorry, it is the stipulated testimony of Barnie Milmann. It will not become germane until a witness named Segalkin is called to testify.

THE COURT: Exhibit 62 is the stipulation as to what testimony?

MR. PADGETT: That would be the testimony of Milmann but it has no relevance at this time until a live witness comes in to give it a basis.

THE COURT: All right.

Are you withdrawing it?

MR. PADGETT: I am offering it for identification

MR. GALLOP: I have no objection to it being admitted

subject to being withdrawn if this witness does not connect it properly.

MR. PADGETT: Except for the fact it relates to other exhibits which have not been introduced and for which we have no number.

THE COURT: All right. Is it easier to mark it for identification only or to just skip it for the time being?

MR. PADGETT: Well, Your Honor, perhaps we could put it in and I will refer to it in summary for the record if I may, and if counsel doesn't mind I can insert the exhibits referred to after that is introduced

THE COURT: Then Exhibit 62, no objection to its admission?

MR. GALLOP: No objection to admission subject to connection.

(Government Exhibit 62 received in evidence.)

THE COURT: All right, the blanks will be filled in later.

MR. PADGETT: That would be the testimony of Mr.

Milmann to the effect that he is manager of property at 1

Sherman Square, he has been shown certain exhibits and recognizes them as the business records maintained by the management consulting firm.

THE COURT: Sherman Square now known as Sherman Plaza?

MR. PADGETT: It is Sherman Plaza.

THE COURT: Is that what I used to know when I was young as Sherman Square?

MR. PADGETT: Sherman Plaza is a new building on Broadway in the upper 70's.

THE COURT: Sherman Square used to be in Greenwich Village.

But this all has to do with an apartment building at 1 Sherman Plaza?

MR. PADGETT: That is correct, sir.

THE COURT: All right.

MR. PADGETT: Government Exhibit 63 in evidence would be the stipulated testimony of Buford Fishback to the effect he is the officer of Brown Sugar Records and he is acquainted with Mr. Hines, having met him in 1967, and that he discussed with Mr. Hines the possibility of Mr. Hines investing money in the corporation, but no money was in fact invested nor was Mr. Hines ever employed by Brown Sugar Records. However he has visited Mr. Hines at 400 East 17th Street, Apartment 4-E. This testimony becomes significant in view of the proposed introduction of certain leases and applications which will indicate the residence in 1 Sherman Plaza wherein Mr. Fishback was used as a reference and Brown Sugar Records was used as an employer.

eg

(Government Exhibit 63 received in evidence.)

THE COURT: All right.

MR. PADGETT: Government Exhibit 64 will be the stipulated testimony of Gerald Joseph to the effect that he is the owner of a dry cleaning establishment and that Mr. Hines incurred certain bills in the amount of \$360 a year for dry cleaning expenses.

(Government Exhibit 64 received in evidence.)

THE COURT: Is 1476 First Avenue somewhere near 400 East 77th Street? I would think so.

MR. PADGETT: I imagine. I believe so, Your Honor.

I am not sure. I could find out if Your Honor would like to know.

THE COURT: Yes, well -- All right.

MR. PADGETT: Agent Clarke informs me that that location is in the 70's on First Avenue.

Government Exhibit 65 would be the stipulated testimony of Lee Dunham, D-u-n-h-a-m, to the effect that he is the proprietor of Dunham's Auto Body in Boontown, New Jersey and that Government Exhibits 66 and 67 are records maintained by Dunham's Auto Body and represent bills paid for by Bennie Hines concerning repairs on Mr. Hines' automobile.

(Government Exhibit 65 received in evidence.)

THE COURT: Mr. Padgett, I notice that there is a

blank on the second page of Exhibit 65. Can that be filled in now?

MR. A GETT: Yes, sir. I believe that refers to 66 and 67.

MR. GALLOP: That refers to the automobile, not the repairs. In other words, that would be for the car. That will come up in a subsequent exhibit.

MR. PADGETT: That blank will be filled in, Your Honor, with testimony of the witness --

THE COURT: Well, if I just indicate in my notes
"second page blank later to be filled in," that's all I need.
But I just want you to realize --

MR. PADGETT: I think we can fill it in this afternoon, Your Honor.

MR. PADCETT: Government Exhibits 66 and 67 would be photocopies provided by Mr. Dunham of bills for, in one case a '69 Eldorado and in another case the '71 Eldorado in the name of Bennie Hines representing repairs made on those automobiles.

(Government Exhibits 66 and 67 received in evidence.)

THE COURT: All right.

MR. PADGETT: Government Exhibit 68, the stipulated testimony of Will Arnsbarger to the effect that in 1968 he sold a 1968 Cadillac Eldorado to Mr. Hines for a certain sum of money which is mentioned in the stipulated testimony, and

19.0

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

there were various financing arrangements agreed to and various payments were received by Mr. Arnsbarger's corporation as payment for that car, that thereafter in November of 1968 there was a further transaction between Arnsbarger and Mr. Hines and as a result of it Mr. Hines was sold a 1969 Cadillac Eldorado and again the financing arrangements are mentioned. Further, that in 1971, Mr. Arnsbarger sold to Mr. Hines a 1971 Cadillac Eldorado and the financial arrangements are discussed. And note that there are in the last paragraph of that stipulated testimony certain blanks which will be. filled in this afternoon, Your Honor, as additional testimony is introduced.

(Government Exhibit 68 received in evidence.)

THE COURT: Mr. Gallop, do you and Mr. Padgett have copies of this Exhibit 68?

MR. GALLOP: Yes.

THE COURT: Down at the bottom of the first page, the witness is speaking of the total amount of the loan to be paid at the rate of \$215 per month and then the first sentence on the second page is, "He was the co-maker on this loan also."

Am I correct in assuming that that means Arnsbarger was a co-maker?

MR. PADGETT: Yes, sir.

THE COURT: All right, then Arnsbarger, in the next

24

paragraph sells the defendant his 1971 Cadillac and gives him a down payment and then an additional down payment, and then the next sentence says, "This car was financed by him."

Is "him" Mr. Arnsbarger again?

MR. PADGETT: Yes, sir.

THE COURT: Does that mean that Arnsbarger paid personally the rest of the purchase price over the cash payments he testified were paid by the defendant and that the defendant repaid Arnsbarger at the rate of \$200 per month for 19 months?

MR. PADGETT: No, sir, I think additional witnesses will show the first two cars, the '68 and '69 Eldorados, were financed through an organization known as the Golden Gate Acceptance Corporation. And that Mr. Hines, the purchaser, and Mr. Arnsbarger as the salesman, were co-makers on that note, although Mr. Hines made the payments. The third car apparently was financed directly through the Cadillac agency, which is a different agency from the first two purchases, and those payments were made by Mr. Hines to Mr. Arnsbarger directly, that is to say the individual who financed it as opposed to being made to the acceptance corporation as in the first two cases.

THE COURT: Isn't that what I said?

MR. PADGETT: No, sir, I thought you said did -- after

2 | th

the 19 or so payments were made, did Hines then continue to pay Arnsbarger personally, and there is no testimony to that effect.

THE COURT: No. Hines paid Arnsbarger \$3,020.50 in cash, and an additional \$1,000 in cash.

Now, that wasn't enough to pay for the car.

MR. PADGETT: That is correct.

THE COURT: And I therefore understand from this stipulation that Arnsbarger personally paid the remainder of the purchase price as a loan to the defendant and the defendant repaid Arnsbarger for that loan at the rate of \$200 per month beginning in May 1971 and continuing for 19 months.

MR. PADGETT: That is correct, Your Honor. However, the additional witnesses will show that with the two down payments and the 19 months at \$200 a month, that it was not enoug to pay off the total cost of the car. There is no testimony as to that --

THE COURT: So Arnsbarger is personally out something?

MR. PADGETT: Yes, sir.

THE COURT: According to his testimony?

MR. PADGETT: Yes, sir.

THE COURT: All right. That is Exhibit 68.

MR. PADGETT: Exhibit 69, the Government would offer as Exhibit 69 the stipulated testimony of Keith Coppock to

8.

Inc., and he is familiar with the records maintained by that organization and that he would introduce, serve to introduce Government Exhibits 70, 71, 72, and 73, which are ledger entries relating to the purchase of automobiles by Hines from George Olsen Cadillac.

(Government Exhibit 69 received in evidence.)

MR. PADGETT: 70 through 73 would be the items referred to by Mr. Coppeck in stipulation and reflects sales contracts for the automobiles referred to. The Government would offer that for the purpose of showing expenditures and the connection between the defendant and certain addresses in New York, notably 400 East 77th Street.

(Government Exhibits 70, 71, 72 and 73 received in evidence.)

THE COURT: At one time?

MR. PADGETT: Yes, sir.

THE COURT: Would I understand from that that in 1971 the price of the Cadillac was \$7200?

MR. PADGETT: Yes, sir, with the various, I suppose, additional items or personally selected items added on that particular model.

THE COURT: I am afraid, Mr. Padgett, you and I are living in the olden times, because that isn't true. The price

of the car was \$8900.

3

2

5

7

8

10

11

12

13

14

15

16

17

18

15

20

21

22

23

24

25

MR. PADGETT: Perhaps that's the inclusion of finance charges, Your Honor.

THE COURT: I beg your pardon?

MR. PADGETT: Perhaps that is with the finance charges included.

THE COURT: No. The cash price, including California sales tax, is \$9,389.50. This has absolutely nothing to do with the issues in this case, but I am just appalled at how far inflation has gone, almost \$9500 for an automobile.

MR. PADGETT: I am afraid, Your Honor, when you ask me if that has any relevance to me, it does not. I wouldn't know the price of a Cadillac before inflation.

THE COURT: All right.

MR. PADGETT: Government Exhibit 74, Your Honor, would be the stipulated testimony of Robert Handley, to the effect that he is familiar with the record-keeping proc dure of the Golden Gate Acceptance Corporation and would serve to introduce 75 and 76, which are the records of the Golden Gate Acceptance Corporation relative to the purchase of these automobiles by Mr. Hines.

(Government Exhibit 74 received in evidence.)

MR. PADCETT: Covernment's 75 and 76 are the ledger sheets showing the receipt of payments by Golden Gate on the

automobile sold to Mr. Hines, the two Cadillacs.

(Government Exhibits 75 and 76 received in evidence.)

THE COURT: Suppose we stop for a few minutes and we can resume, say, in about 10 minutes.

(Recess.)

THE COURT: All right.

MR. PADGETT: The Government would offer as Government's 77 the stipulated testimony of Leo Kaminsky to the effect that he is the manager of Kaminsky Oldsmobile-Cadillac located in Lorraine, Ohio, and that in 1970 he sold a 1970 Oldsmobile Cutlass to Mr. Hines and that it was --

THE COURT: When?

MR. PADGETT: 1970, and that the stipulation would then discuss the financing arrangements and refer to a financing arrangement with the Lorraine National Bank of Lorraine, Ohio.

(Government Exhibit 77 received in evidence.)

THE COURT: Didn't one of the exhibits refer to a bank account of the defendant in Lorraine, Ohio?

MR. PADGETT: Yes, sir, it did.

THE COURT: This really doesn't indicate that he necessarily had an account at the Lorraine National Bank. He said he just financed it through the Lorraine National Bank.

MR. PADGEIT: Yes, sir.

THE COURT: All right, Exhibit 77 (handing).

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

MR. PADGETT: Exhibit 78 is the stipulated testimony of Douglas Williams to the effect that he is the collection manager, consumer retail division, of the Lorraine National Bank and that his restimony serves to introduce Government's 79 and 80, which are certain copies of business records of the Lorraine National Bank.

MR. GALLOP: Before we get to that, I received two documents that I thought were 77 and -- I am just confused.

MR. PADGETT: These are the documents for the Lorraine National Bank (depositing on counsel table.)

(Government Exhibit 78 received in evidence.)

THE COURT: All right.

MR. PADGETT: Government Exhibits 79 and 80 are certain documents of the Lorraine National Bank referring to the automobile indicated in Mr. Kaminsky's stipulated testimony. I should note that the Government is prepared to enter into a written stipulation with counsel which becomes significant upon examination of one of these documents, that is, the type of employment of Mr. Hines.

(Government Exhibits 79 and 80 received in evidence.)

THE COURT: All right.

MR. PADGETT: May we have a moment, Your Honor?

THE COURT: All right.

(Pause.)

1 e

MR. PADGETT: Government's 81 is the stipulated testimony of Patricia Kerr to the effect that she is the treasurer of Universal Coach Corporation in Detroit, Michigan and she would serve to introduce the business records of Universal Coach Corporation which would be then Government's 82 through 86 collectively. There are certain blanks on Government's 81 which will be filled in this afternoon, Your Honor.

(Government Exhibit 81 received in evidence.)

MR. PADGETT: Government's 82 through 86 are photocopies of the bills of the Universal Coach Corporation for various customizing done on Cadillac-Oldsmobiles. The bills are made out in the name of Bennie Hines, 400 East 77th Street.

(Government Exhibits 82 through 86 received in evidence.)

THE COURT: All right.

MR. PADGETT: Your Honor, as Government's 87 I would offer the testimony, the stipulated testimony of Martin Rosenthal to the effect that he is the manager of the Western Union branch office at 600 Third Avenue in New York and that he would serve to introduce the business records of the Western Union Corporation which would he Exhibits 88 through 105, inclusive.

(Government Exhibit 87 received in evidence.)

THE COURT: All right.

eg

MR. PADGETT: And Government's 88 through 105 would be copies of documents withdrawn by Mr. Rosenthal from the records of the Western Union Corporation and would be copies of Western Union money orders sent by an individual named Bennie Hines to various recipients. The significance of that is that the recipients indicate Mr. Arnsbarger of Olsen Cadillac Corporation and other corporations. The exhibits are the green sheets, there are photocopies which will be removed.

(Government Exhibits 88 through 105 received in evidence.)

THE COURT: I take it, Mr. Padgett, you would say that whether these remittances shown by these exhibits were in any way connected with other evidence in the case, they show expenditures?

MR. PADGETT: That is correct, sir.

THE COURT: And according to what you told me this morning, if there were expenditures your submission is there had to be income?

MR. PADGETT: That is correct, sir.

Your Honor, counsel has requested and I have no objection that two further documents he offered as 77-A and 77-B. 77 was the stipulation of Mr. Kaminsky to the effect that an automobile had been purchased. I had intended to

c g

introduce these documents and I shall, 77 would be --

THE COURT: 77-A?

MR. PADGETT: 77-A, excuse me, appears to be the bill for that Oldsmobile Cutlass and 77-B appears to be an order form for the purchase of the vehicle.

(Government Exhibits 77-A and 77-B received in evidence.)

THE COURT: All right.

MR. PADGETT: Your Honor, there are no further stipulations at this time. I believe that we can enter into several more. However, one will require some preparation and the other will require some discussion between counsel and myself. The Government is prepared, however, to go ahead with two live witnesses this afternoon in order to expedite matters tomorrow.

THE COURT: All right. Any objection, Mr. Gallop?

MR. GALLOP: No, Your Honor.

MR. PADGETT: The Government would call Janice Clinthorne.

JANICE CLINTHORNE, called as a witness

by the Covernment, was duly sworn and testified as follows

DIRECT EXAMINATION

BY MR. PADGETT:

THE COURT: Please try to keep your voice up because

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Vitaliano-direct

THE COURT: · I will reserve decision on your motion.

MR. PADGETT: I call Detective Anthony Vitaliano.

THE COURT: This is not a long witness?

MR. PADGETT: The direct examination will be relatively short. I don't know how long the cross-examination would be. I would not object if -- well, I really can't predict how long the cross will be.

MR. GALLOP: I might say if after direct examination I think the cross-examination will be lengthy, I will indicate it to the Court.

THE COURT: All right.

ANTHONY VITALIANO, called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

MR. PADGETT:

Q Detective Vitaliano, will you tell us your name and shield number?

THE COURT: Just the name.

- Q Shield number and current assignment?
- A 3258, and I am presently assigned to Public Morals
 Division, Central Investigation Section.
- Q You will have to speak up, officer. I can't hear you.
 - A Public Morals Division, Central Investigation Section.

conversations took place? Withdrawn.

How many conversations did you have?

2

2

22

23

25

25

3

4

5

6

7

8

9

10

1

2

3

4

- A At least three.
- Q Can you tell us when and where the first conversation took place?
- A Yes, sir. Early July of '73. In an outside Tattler's bar and grill located at 141 East 57th Street.
 - Q When did the second one take place and where?
- A The second one took place approximately January of 1974 inside of Adam's Corner grill located at 450 Third Avenue
 - Q And the third?
- A The third happened approximately February or March of 1974. That was inside Charlie Two's grill, 551 Second Avenue.
- Q Can you tell us the substance of the first conversation?
- A The first conversation was relative to Hines informing me that he was leaving New York, going to Las Vegas due to the --
 - Q Did he tell you why?
- A -- fact that his girls weren't giving him enough money in New York City.
- Q Can you tell us the substance of the second conversation?
- A In the second conversation inside Adam's Corner, the defendant offered to buy me a drink, and I asked him how was

l eg

1

2

3

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Vegas, and he said it was okay. That's about it.

Q And the third conversation?

A Well, the third conversation I walked inside of Charlie Two's and the defendant stated to me it seems like wherever I go, you follow me. And that was it.

- Q Does the name Barbara Pittman mean anything to you?
- A Yes, sir.
- Q Can you tell us who Barbara Pittman is?
- A Barbara Pittman is a known prostitute.
- Q Do you know if she has any relation to the defendant
- A Supposedly she is, was at one time, a prostitute working for Hines.

MR. GALLOP: I am going to object to the response.

The witness said "supposedly." If he doesn't know, he should indicate.

THE COURT: Yes, I think Mr. Gallop has a point.

MR. PADGETT: Very well. I withdraw the question.

THE COURT: All right. I sustain the objection.

Strike the answer.

Q Sir, I show you Government's 77-A in evidence, which is a bill from Kaminsky Oldsmobile-Cadillac in Lorraine, Ohio, representing an automobile sold to a Bennie Hines, and I direct your attention to the section on the right-hand side.

I ask you to read the two names appearing there.

Vitaliano-direct

- A Barbara -- B. Pittman and B. Hines.
- Q Thank you very much.

MR. PADGETT: No further questions.

MR. GALLOP: I have no questions of this witness.

THE COURT: All right. Thank you, Detective. You may be excused.

(Witness excused.)

MR. GALLOP: After the witness leaves I'd like to make a motion with regard to his testimony.

THE COURT: Yes.

MR. CALLOP: The indictment here, Your Honor, covers the defendant's failure to file tax returns for the years '68 through '72. The first conversation testified was in July of '73. I don't see any relevance to this testimony to the issues in this case. I would ask that his testimony be stricken.

THE COURT: Well, I certainly can't strike all the testimony because the testimony about Barbara Pittman has to be left in because at least the Government is entitled to argue an inference from the fact that a B. Pittman is shown on the Lorraine, Ohio bank records.

MR. PADGETT: Your Honor, may I be heard in response to counsel's initial objection?

THE COURT: Yes. As to the rest of it, all right, tell me.

MR. PADGETT: Your Honor, the Government has intro-

duced testimony through Agent Hurley to the effect that as far

back as 1967, prior to the years in question, that Mr. Hines

Vitaliano, will orge the Court to draw the inference from the

conversations that Mr. Hines was a self-admitted pimp in 1973.

was a self-admitted pimp. The Government, through Officer

The additional evidence adduced by the Government will show that throughout the years 1968 through '72, that is to say the intervening five years, Mr. Hines was in fact a piec. Although the conversations of Mr. Hines to Officer Vitaliano occurred subsequent to the dates in the indictment, certainly they are includable for consideration by the Court as under the theory of consistent acts, acts which are part of the general scheme, acts which indicate to the Court that Mr. Hines was in fact employed in the business of managing prostitutes from 1967, as a bare minimum, to 1974, that is to say the very year the indictment was handed down; in fact, not less -- not more than one and a half months prior to the returning of the indictment by this grand jury. Certainly it shows a consistent pattern of activity, a consistent business practice by the defendant.

THE COURT: Well, I don't think I will grant the

motion, but of course the last two conversations -- perhaps

I ought to grant it perhaps to the last two conversations, the

ones in January and February of this year, because if relevant

they are immaterial. The second conversation was that the defendant offered to buy him a drinks and the third conversation was the defendant said you seem to be following me around. I don't think that's too -- too flimsy, really, to weigh in the scales.

MR. PADGETT: Your Honor, the third conversation I would agree with you. That was brought up merely to show the total scope of the conversations. The second conversation, if Your Honor will recall, however, there was a brief preliminary reference to Las Vegas. I think the officer testified he asked the defendant how was Las Vegas.

THE COURT: Well, but what does the defendant's opinion about Las Vegas -- in general, I don't think --

MR. PADGETT: That's quite true, when isolated,
Your Honor, but when viewed in light of the preceding conversation which was Mr. Hines' announcing he was moving his stable
to Las Vegas.

THE COURT: No, he didn't say he was moving his stable. He said he was going to Las Vegas.

MR. PADGETT: I think the testimony he was going to Las Vegas because the girls are not making enough money.

THE COURT: The girls were not giving him enough money, but he didn't say he was going to take the girls with him.

For all I know, he was going out to Las Vegas to make money in

some other business. Whether I grant it or not, the second two conversation obviously are immaterial, and I think I will strike them. I think I will leave the first conversation in when he says the girls are not giving him enough money. But even that in the total context doesn't mean a great deal.

All right, so we will start in at ten o'clock tomorrow morning.

MR. PADGETT: Yes, sir.

THE COURT: All right.

Mr. Clerk, we will be in recess.

(Adjourned to May 8, 1974, at 10:00 a.m.)

2

3

UNITED STATES OF AMERICA

v

74 Cr. 260

BENNIE HINES

Defendant

New York, May 8, 1974 9:30 a.m.

Trial resumed.

(In open court.)

THE COURT: Good morning.

Now, I have spoken to Mr. Hunt, who is the manager of the building, and asked him please to turn off the air-conditioning system because it is too cold in here.

MR. GALLOP: I agree.

THE COURT: There is nothing we can do about it this morning, but I have also asked him to try to get us some more light in here because when you are looking at papers, and for the reporter and the witness, there is just not enough illumination.

Now, before we call a witness, there is just one question I wanted to ask, and that is, does the Government agree with my preliminary view that proof of knowledge of the obligation to file returns is an essential element of the offense?

MR. PADGETT: No, sir. Except as insofar as that knowledge may be inferred by the actions of the defendant.

7

8

6

5

9

10

11

13

14

16

17

19

20

21

23

24

The Government feels it is not the Government's burden to prove affirmatively a knowledge on the part of the defendant.

THE COURT: All right. We are going to have a very great deal of trouble over that because my view is that it is necessary to prove it.

All right, but we will cross that bridge when we come to it at the end of the Government's case.

All right. Mr. Padgett, are you ready to go?

MR. PADGETT: Yes, Your Honor. Before calling any
witnesses, Your Honor, I would like to, in the nature of an
offer of proof, make a statement to the Court concerning the
the next succession of witnesses.

Yesterday morning, I put a witness on the stand,

Special Agent Klass of the Internal Revenue Service, who,
as Your Honor will remember, testified that although he was
now retired from the service, there was a period back last
year in 1973 when he did perform certain functions in respect
to this case.

My direct testimony was -- rather, my direct questioning was to elicit the information that he had forwarded certain letters to Bennie Hines at a certain address.

THE COURT: Exhibits 20 and 21.

MR. PADGETT: That's correct, sir.

I believe that was the extent of my direct examination

CONTRE DE DISTRICT COURT DE PORTERS US COURTHOUSE

5

6

7

8

9

10

11 12

13

14

15

16

17

18

19 20

21

22

23 24

25

Thereafter Mr. Gallop inquired as to the nature and extent of any other performed by Mr. Klass and the nature and extent of the activities performed by agents acting under his direction. I now propose to call a series of agents who will testify as to the extent of the activities they performed, not only under Mr. Klass, or during the period when he was assigned to the Internal Revenue Service, but, in addition, the activities, nature and extent of the activities, which they performed yesterday at the request of the Internal Revenue Service, which are similar to and in some instances identical with the activities they performed at the time when Agent Klass was an Internal Revenue Service agent.

The difficulty here, and I state this quite candidly, Your Honor, is that these agents' testimony would be that they visited a large number of banks in the New York area, both in the spring of 1973 and yesterday, in an effort to determine whether these banks had any banking accounts in the names utilized by the defendant or at least in those was names which had been brought out before the Court and their testimony would be that no records were found.

Obviously, they themselves did not check the records but are relying upon the information given them by officers of those various banks and branches. It is concededly hearsay testimony, and the Government could, if required by

defense or by the Court, produce the 50-odd bank officers to testify that the records search was made.

THE COURT: This, of course, is a records search for the years in question here?

MR. PADGETT: Yes, that is correct.

THE COURT: It included the years in question here?

MR. PADGETT: That is correct, sir.

THE COURT: I think the problem is fairly simple.

If Mr. Gallop is willing that this testimony be taken in lieu of the testimony of the bank officers, certainly I wouldn't require you to produce them.

MR. GALLOP: I am inclined to do so, Your Honor, but I think the Court should take recognition of the fact that the search, so far as I know, most of the search took place yesterday. It was obviously prompted by the testimony that I elicited on Mr. Klass' cross-examination, and as such, was done in admitted haste and done in such a manner that certainly was not as thorough and as deliberate as the investigation which took place prior to the issuance of the indictment. I think the Court should recognize that fact. I assume the purpose --

THE COURT: That would go to the weight of it.

MR. GALLOP: Right. I assume the purpose is for the Government to show that they have made a diligent effort

to see if there was any other source of income -- of funds rather than income, that could have paid for these expenditures which were testified to.

THE COURT: I think not only that, but I can conceive of the Government arguing that the fact that a man living in this community has no bank account here it is permissible to infer from that that he is concealing receipt of income.

MR. GALLOP: Well, I think the Court would have to --

THE COURT: For whatever it is worth.

MR. GALLOP: Yes, for whatever it is worth.

THE COURT: If you object on the ground it is hear-say, I would have to sustain it.

MR. GALLOP: No, I will hear the testimony first and the chance is I will not object, but I think it should be recognized this is as to an investigation that took place yesterday, not during the primary association.

MR. PADGETT: If I could respond very briefly, I think Mr. Gallop has missed the mark a little bit. The evidence will show, in the spring of 1973 a total of 28 banks were contacted and yesterday some 34 banks were contacted, 18 of which had been previously contacted in the spring of '74 making a total of 74 banks. And although the effort yesterday was an extensive one, it was less extensive than the one done in the spring of '73.

124a Clarke-direct

ers

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

MR. GALLOP: In that case, I probably will not object to the hearsay nature of the testimony.

THE COURT: Mr. Padgett, you are really addressing yourself only to the weight of the evidence?

MR. PADGETT: Yes, sir.

THE COURT: All right, you may proceed.

MR. PADGETT: I ask permission to recall Special Agent John Clarke.

THE CLERK: Agent Clarke, you are still under oath. CLARKE recalled as a witness, having been previously sworn, resumed the stand.

DIRECT EXAMINATION

BY MR. PADGETT:

Agent Clarke, you testified yesterday that you were the case agent in this matter; is that correct?

Yes, sir.

Are you personally aware of any efforts made by Internal Revenue Service in connection with this case?

Yes, sir. A

Directing your attention specifically to the question Q of bank canvasses, are you aware of bank canvasses made by the IRS in this case?

. Yes, sir.

Can you tell us when bank canvasses commenced to Q

24

2

3

5

6

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

be made?

A It was approximately September 1973.

Q Can you tell us how many banking canvasses were made by agents of the IRS prior to the handing down of the indictment?

A At that time, I would believe there was 28 bank canvasses made.

Q When you say "bank canvasses," tell us what a bank canvass is.

A And agent goes into a bank in the area of the taxpayer's residence, business or whatever to ascertain whether he has a bank account in that particular bank.

Q And when you say "the taxpayer," can you -- withdrawn.

Do you know which questions were asked by the respective agents of the various banks?

A Yes, sir.

Q Do you know which accounts were checked for?

A Yes, sir.

Q Can you tell us, in substance, the nature of the agent's inquiries?

A He would go into the bank and ask one of the officers
if they have any accounts in the name of the subject of the
investigation and that would be --

Q Can you tell us which names you inquired about?

1263 Clarke-direct

ers

1

2

3

5

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

We inquired, in this particular case, regarding one Bennie Hines, 'Ernest Williamson, Ralph Byrd, Walter Mitchell -- that's about it.

- Does the name Charles Daniels mean anything?
- Charles Daniels.
- Can you tell us whether there were any responses from these banks?
- We had two positive responses of bank accounts, one the New York Bank for Savings and one Chemical Bank of New York.
 - What were the responses --Q

THE COURT: Excuse me. When you asked them if there were any accounts in these five names, did you give them any period of time?

THE WITNESS: Yes, sir.

THE COURT: What period of time?

THE WITNESS: We would ask them for any open or closed accounts for any of the years involved prior to the investigation and during the investigation.

THE COURT: Well, what are the years that you asked them about?

THE WITNESS: Specifically from 1966 to 1972 -- 1973

THE COURT: 1966 through 1972?

THE WITNESS: Yes, sir.

23

24

ϵ	r	5
		7

1

3

5

6 7

8

9

10 11

12

13

14

15

17

16

18 19

20 21

22

23

24

25

THE COURT: When was this inquiry made?

THE WITNESS: In September of 1973.

THE COURT: So it could only extend to the date on which you made an inquiry; is that right?

THE WITNESS: Yes, sir, that's correct.

THE COURT: All right, thank you.

Go ahead.

- Now, you indicated that there there were affirmative Q responses for two banks; is that correct?
 - That is correct. A
 - What about the remaining 26 banks? Q
 - Negative results from from all the names requested. A

THE COURT: You mean there was 28 banks in all?

THE WITNESS: That is correct, sir.

THE COURT: Twenty-six said no accounts?

THE WITNESS: That's right, sir.

THE COURT: And two said there were accounts?

THE WITNESS: Yes, sir.

- Now, you mentioned the New York Bank for Savings. Q
- Can you tell us which branch of it that was, sir?

MR. GALLOP: If you want, I will stipulate.

MR. PADGETT: Will you stipulate that was the branch and the account ledger sheet which has been previously

introduced in evidence?

Clarke-direct/cross

MR. GALLOP: I will so stipulate.

THE COURT: Let me get the name of the exhibit.

MR. PADGETT: Yes, sir.

THE COURT: Let's see, 31, 32, and 33. All right.

MR. PADGETT: Will you also stipulate that the response of the Chemical Bank was introduced in evidence as Government Exhibits yesterday and they indicated a balance of \$250?

MR. GALLOP: What I will stipulate is that is the bank referred to by the testimony. I believe that is the account of one Charles Daniels.

MR. PADGETT: It was taken subject to connection, Your Honor.

MR. GALLOP: It was to be connected by the Government.

THE COURT: Yes, 18 and 19.

MR. GALLOP I will not waive previous objection.

Maybe that has not been connected to this defendant.

MR. PADGETT: I have no further questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. GALLOP:

Q Mr. Clarke, you say you canvassed 28 banks. Do you mean by that 28 branches of banks?

2

1

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

22

23

24

5

8

10

11

13

16

17

18

20

21

22

24

9

12

14

15

19

23

25

No, different type banks, I'm sorry, within the area of the residence of the subject.

Well, did you go to, like, different branches of the Manufacturers Hanover rather than --

If the particular bank canvassed did not have a central inspection system which covered all their branches, we could have to go to individual branches.

That's what I'm driving at. Was this a canvass of Q the individual branches or the central bank?

- These were as the individuals. A
- The individual branches? Q
- Individual branches.

So if you went to one branch of, say, the Chemical 0 Bank, it wouldn't necessarily mean that there were no Chemical Bank accounts in other branches; is that correct?

Yes.

Now, did you have any method that you used in the Q determining what branches you were going to visit?

You could cover all banks within the area of a residence that we had known the subject taxpayer to reside in.

In other words, the various apartments that have Q been testified to you would go in the neighborhood of those apartment houses to the various branch banks.

Yes, sir.

1

2

3

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- Now, introduced into evidence were applications Q for apartment leases. I think you are familiar with them.
 - Yes, sir.
- And on several of those applications bank references are set forth. Did you go to the banks set forth in the references?
 - Yes, sir.
- Now, when you say "yes," did you specifically go to the Loraine National Bank in Lorraine, Ohio, which is set forth on Government's Exhibit 15 in evidence.
 - A Yes, we did, sir.
 - Did you inquire? Q
 - Yes, sir. A
 - And I believe there is a Manufacturers Hanover. Q

THE CO'RT: Excuse me, what was the answer from the Lorraine Bank?

I could not be positive, sitting here, sir. I would have to look and see. I know they gave us a loan account, I believe, for a car. I don't know off hand.

Q Perhaps --

THE COURT: Well, did the Lorraine Bank tell you that Hines, Daniel, Williamson, Byrd, Mitchell had an account, a bank account, deposit account, checking account at the Lorraine Bank?

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE WITNESS: They said no; sir.

THE COURT: They said no? They said five names didn't have?

THE WITNESS: That's right.

THE COURT: All right.

- Q Do you have any indication of the inquiry and the response from Lorraine Bank in your files of your investigation?
 - A I don't know off hand, sir.
 - Q How was this reply transmitted to you?
 - A An agent visited the Lorraine National Bank.
 - Q And made a specific inquiry to the various names?
 - A Yes, sir.
 - Q Wouldn't that agent write a report?
- A If it was a negative response from the bank, he would not necessarily make a report. He would just say "no response" on it, or "negative."
- Q Wouldn't there be a general report of the agent as to all the banks he visited?
- A The particular agent who covered Lorraine would just say, if there was a negative response from the bank regarding any accounts, he would just tell me that, well, it's negative on the bank.
- Q Wouldn't it be the normal procedure for him to write some sort of memorandum?

A 1323 Clarke-cross

ers

1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- A It should be but I can't say that he did.
- Q Do you recall any such memorandum?
- A No, sir.
- Q Now, I show you Exhibit 38 in evidence and the Manufacturers Trust Co., 1513 First Avenue is set forth. Has this particular branch been visited?
 - A I would have to look at the list of banks.
 - Q Is there such a list you can refer to?

 MR. GALLOP: Can you provide the witness with the

list?

- A What was the address on it? I forgot.

 1513 -- yes, sir. That was checked.
- Q And what was the result?

 MR. PADGETT: Sorry, I didn't hear the response.
- A I'm sorry. That bank was visited by one of our agents.
 - Q What was the response?
 - A Negative.
- Q Now, you have a written response to the negative reply for that particular bank; is that correct?
 - A Yes, sir.
 - Q Can you --
- A If this was just done by the agent and he indicates it was a negative reply to that particular fact.

- Q Shouldn't there be such similar response to the Lorraine Bank?
 - A I say there should be, but I don't know of it, so --
 - Q Do you know if it exists?
 - A No, sir.
- Q Now, did you check any other cities besides Lorraine
 Ohio and New York City?
 - A Regarding bank accounts?
 - Q Regarding bank accounts.
 - A Not that I know of, sir.
- Q Well, now, you were aware at the time you were in charge of this investigation that two or three automobiles were purchased in California and that an address was given to the automobile agency and the finance company, a California address. Was any similar neighborhood canvass made about that particular address?
 - 'A No, sir.
- Q And I believe it is Government Exhibit 1 in evidence a driver's license of the defendant with an address in Michigan, 3003 Cadillac Boulevard, was given. You were aware of the existence of that license and that address, weren't you?
 - A Yes, sir.
 - Q Was any canvass made at the Michigan address?

A 134a Clarke-cross

ers

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23.

24

A No, sir.

Q Are you familiar with the location of the defendant's family?

A Yes, sir.

Q And where are they located?

A Memphis, Tennessee.

Q And do you know where they reside in Memphis,

Tennessee?

A Off hand, no. I would have to check the records, but it was Memphis, Tennessee.

Q And was any canvass made in Memphis, Tennessee?

A I don't believe so, sir.

Q Are you familiar with the fact that defendant resided in Chicago for a period of time?

A No, sir.

Q Are you familiar with the fact that the defendant resided in Florida for a period of time?

A No, sir.

Q You are not. All right.

I show you Government Exhibit 32 in evidence, which is the signature card from, I believe, the New York Bank for Savings, and as you will note, the dfendant gave an address on that signature card of 55 Walcott Terrace, Newark, New Jersey.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A	Yes,	sir.

Q Was any check made of the banks in the area of that particular address?

Clarke-cross

- A No, sir.
- Q Are you aware that the defendant is married?
- A Yes -- I don't know, sir, really.
- Q You seem to hesitate. Do you know that he is not married?
 - A I don't know that he is not married.
- Q Did you attempt to ascertain whether he was married or not?
 - A By checking records, you mean, sir?
 - Q Yes.
 - A No, sir.
 - Q Did you attempt to ascertain the name of his wife?
- A I had known from records of a woman who was believed to be his wife, let me say that.
- Q Was any attempt made to check any bank records in the name of his wife?
 - A No, sir.
- MR. GALLOP: Would the Court bear with me for a moment?
 - THE COURT: Of course.
 - (Pause.)

3

5

6

7

8

9

10

11

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Were you aware, in the course of your investigation, that the defendant resided in Detroit for a period of time?

THE COURT: In where?

MR. GALLOP: Detroit, Michigan.

THE COURT: You asked that.

A You asked that already.

MR. GALLOP: I'm sorry.

THE COURT: That's in Cadillac.

MR. GALLOP: I have no further questions.

REDIRECT EXAMINATION

BY MR. PADGETT:

Q The Internal Revenue Service checked over 45 banks; is that your testimony?

A Yes, sir.

THE COURT: Well, wait. Where did you get the 45 figure from? The only figure I have is 28.

Q That in 1973 the Internal Revenue Service checked 28 banks; is that correct?

A Yes, sir.

Q And found two positive responses and 26 negative responses?

A That is correct, sir.

Q And then you say you had heard something about the defendant being married; is that a fair statement?

A 137a Clarke-redirect

ers

A Yes.

Q Did you know the name of his wife?

A Not her last name, no.

Q Had you examined records which indicated that the defendant's wife was either Constance Hines, Gloria Byrd or a number of other individuals?

A Yes.

MR. GALLOP: I'd have to object to the leading nature of these questions.

THE COURT: Well, I'll permit it.

Q In any event, your testimony is that the Internal Revenue Service did not perform a neighborhood search in Detroit, San Francisco, Chicago, New Jersey or any other areas in the United States save New York; is that correct?

A That is correct, sir.

Q During the years 1968 through 1972, where did your investigation reveal that the defendant resided?

A New York City, sir.

THE COURT: Well, the years 1966, you told me that was the period covered.

Q The period 1966 to 1972, where did your investigation reveal that the defendant resided?

A New York City.

Q And did you make a neighborhood canvass of the banks

2

3

5

6

7

8

9

10

11

12

13

14

16

17

18

19

20

in New York?

A Yes, sir.

MR. PADGETT: Very well.

RE-CROSS-EXAMINATION

BY MR. GALLOP:

Q Is it your testimony, Mr. Clarke, from 1968, or from 1966, the defendant resided in New York?

A My investigation showed 1966 residence in New York on --

- Q Do you know when he came to New York?
- A I really can't say, no.
- Q You say your investigation indicated he resided in Chicago. Do you know when he resided in Chicago?
 - A It was in previous '66, I believe.
 - Q And do you know how long he resided in Chicago?
 - A No, sir.
- Q Did you make any attempt to ascertain how long he resided there?
 - A No, sir.
- Q And what specific date, if you know, did he come to New York?
 - A I don't know the specific date.
 - Q Could it have been 1967?
 - A Possibly, I don't know.

22

21

23

24

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- Q Or 1963.
- A No, I believe -- no, he was in New York prior to '68, I believe.
 - Q So he came prior to '68?
 - A Yes, sir.
 - Q Which could have been '67; is that correct?
 - A Yes, sir.

MR. GALLOP: No further questions.

THE COURT: Mr. Padgett?

MR. PADGETT: No further questions.

THE COURT: All right, thank you Mr. Clarke.

(Witness excused.)

MR. PADGETT: Your Honor, the remaining witnesses of this type would be the agents who conducted the inquiries yesterday. Perhaps we could speed matters up by stipulating or calling one of the witnesses and indicating the testimony of the others would be substantially the same, with, of course, different banks other than the first.

MR. GALLOP: I would like one witness to testify to the procedure which was followed so I can get some idea of what was done.

THE COURT: That sounds like a good idea. Why don't we get one.

MR. PADGETT: Call Special Agent Watson to the

	I
	l
1	ı
	ı
2	H
4	I
	I
3	I
	I
4	I
	ı
5	ı
	I
6	I
0	I
	ı
.7	ı
	ı
8	ı
	ı
9	I
3	I
10	ı
	I
11	
	۱
12	I
12	-
	-
13	1
	I
14	
	I
15	I
	1
16.	١
10.	1
	I
17	1
	I
18	١
	I
10	-
19	-
	-
20	-
	-
21	
	-
22	

stand, please.

CLARENCE WATSON, called as a witness by and on behalf of the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PADGETT:

Q Sir, what is your occupation?

A Special agent.

Q With which service?

THE COURT: Mr. Watson, excuse me. If an Internal Revenue Service officer uses the expression "special agent," am I to understand that that's in the Intelligence Division?

THE WITNESS: Yes, sir.

THE COURT: And suppose a man is just an ordinary agent, just audits returns, let's say, is he just an agent?

THE WITNESS: No, sir, he would be an Internal Revenue agent.

THE COURT: He would be an Internal Revenue agent?
THE WITNESS: Yes, sir.

THE COURT: So if the word "special" is used, then
I should conclude that that's an Intelligence Division agent?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

All right.

25

23

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

rs	Watson-direct

- Q Now, sir, I direct your attention to yesterday, the 7th of May, did you have a certain assignment yesterday?
 - A Yes, sir, I did.
 - Q Would you tell us what that assignment was.
 - A To canvass banks in the area of one of the residences,
 - Q And what were you seeking, sir.
 - A For bank accounts.
 - Q In which names?
 - A May I refer to my notes, sir?
 - Q Yes.
- A In the names of Bennie Hines, Ernest Williamson, Charles Daniels, John Webster, Ralph Byrd, Walter Mitchell.
 - Q How many particular backs did you visit?
 - A I visited four banks, sir.
 - Q Can you tell us the names of those banks?
 - A Yes, sir. Chemical Bank.
 - Q And what is the address?
- A The address is 79th Street and York Avenue, Manhattan.

 First National City Bank at 1512 First Avenue, Manhattan.

 tan. Manufacturers Hanover Trust Co., 1513 First Avenue,

 Manhattan. Lincoln Savings Bank, 1520 York Avenue, in Manhattan.
 - Q What was the purpose of your visit?
 - A To locate any accounts, if any.
 - Q For what periods?

ers

1

2

3

4

5

Watson-direct

- A For the period 1965 through 1972.
- Q And in each of the four banks visited, did you speak with an officer of the bank?
 - A Yes, sir, I did.
- Q Do you know if that officer caused a records search to be made?
 - A Yes.
- Q Can you tell us what the results of that search were?
 - A They were negative results.
 - Q For each of the names?
 - A For each of the names.
 - Q In each of the banks?
 - A In each of the banks.
 - MR. PADGETT: Thank you very much.
- MR. GALLOP: May the Government indicate whether any of the banks that were gone to had been previously gone to during the first, the September '73, investigation.
- Q Do you know, sir, if any of the banks you had indicated had been visited previously in 1973?
 - A I believe so, sir.
 - Q Which ones?
- A Chemical Bank, that's at 79th and York, First
 National City Bank at 1512 First Avenue, Manufacturers Hanover

8

7

10

12 13

14

15

16 17

18

19

20

21

22

23

24

A 143a Watson-direct

ers

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Trust at 1513 First Avenue.

There may be more, sir, that I am not familiar with.

- Q Of the banks you visited, those three had been?
- A Those are the ones that are repeats.
- Q But Lincoln Savings Bank had not been visited previously; is that correct?
 - A That is correct.

MR. PADGETT: I have no further questions.

THE COURT: Anything else?

MR. PADGETT: No.

Would you stipulate that Joseph --

THE COURT: May we excuse the witness?

MR. PADGETT: Yes.

THE COURT: All right.

(Witness excused.)

MR. PADGETT: Would you stipulate if Joseph Leonti
were called to the stand that he visited the Bank of Commerce
at 69 Fifth Avenue, New York, New York; Chase Manhattan branch
at 62 Ninth Avenue, New York, New York; Manufacturers Hanover
Trust Co., 79 Eighth Avenue, New York; the Chase
Manhattan Bank at 84 Fifth Avenue; First National City Bank,
111 Eighth Avenue, New York, New York; The Amalgamated Bank
of New York, 11 Union Square, New York; Banco Credito,
1 Union Square, New York, New York; and the Greenwich Savings

Bank, 101 West 14th Street, New York, New York; to determine whether or not these banks had any accounts for the years 1965 through 1973 in the names Bennie Hines, Ernest Williamson, Charles Daniels, John Webster, Ralph Byrd, or Walter Mitchell, and in each instance he received a negative reply?

MR. GALLOP: May I just make one inquiry, Your Honor?

Again the New York Bank for Savings is mentioned. I would ask if that is the same bank branch as Exhibit 32.

MR. PADGETT: Exhibits 32 and 33 were exhibits received from the New York Bank for Savings branch at 86th Street. Agent Leonti would testify he visited the New York Bank for Savings at 81 First Avenue, New York City.

MR. GALLOP: That is a different branch and I will so stipulate as to his testimony.

MR. PADGETT: That Special Agent Jacobs would testify if he were called to the stand that he visited a total of six other banks and received essentially the same response in response to essentially the same questions. That Special Agent Stenhiewcz would testify that he visited a total of seven separate banks and received in response to the same questions essentially the same responses. That Special Agent Di Tomasso visited a total of seven separate banks and received in response to the same questions essentially the same answers.

MR. GALLOP: I will so stipulate, with two provisions,

Your Honor, one, that the Government indicates that all these branches were located in, I assume, in the Borough of Manhattar?

MR. PADGETT: That is correct.

MR. CALLOP: And that the banks indicated on Government Exhibit 19, Chemical New York Bank, Number 2, Bank of New York, are not amongst them.

MR. PADGETT: That is correct, Your Honor.

THE COURT: I don't think, Mr. Gallop, there is any Bank of New York involved.

MR. CALLOP: Excuse me, New York Bank for Savings; is that so?

MR. PADGETT: That is correct.

MR. CALLOP: Then I will so stipulate.

THE COURT: All right.

MR. PADGETT: Will you further stipulate, Counsel, that a total of 44 separate banks were visited at various times by agents of the Internal Revenue Service?

MR. GALLOP: I have no objection to it but that speaks for itself. I don't believe it is proper for me to stipulate to it.

MR. PADGETT: It does, Your Honor, except for the totals of the banks visited in 1973, and the totals of the banks visited yesterday, exceed 44, because a number were visited twice.

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

THE COURT: Were duplications?

MR. PADGETT: Yes.

THE COURT: I realize that, because we have been talking about 50, but the 50 has to be reduced and you say that the total of separate banks visited is 44?

MR. PADGETT: That is correct.

MR. GALLOP: If Mr. Padgett represents that, I will so stipulate.

THE COURT: All right, and Mr. Gallop, if you want to see the records, I am sure the Government would show it, so subject to correction, I am going to accept it is 44 separate banks were visited.

MR. PADGETT: Yes.

THE COURT: Banks or bank branches.

All right.

MR. PADGETT: Your Honor, might I have about five minutes to speak with a witness in the witness room?

THE COURT: Yes.

MR. GALLOP: May I make a phone call, Your Honor?

THE COURT: Yes.

(Recess.)

MR. PADGETT: The Government calls Roosevelt Bell to the stand.

ROOSEVELT BELL, called as a witness by

25

1770		
	11	
	••	

3

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

the Government, was duly sworn and testified as follows:

BY MR. PADGETT:

- Q Mr. Bell, what is your address?
- A Right now I am residing at Lewisburg Penitentiary.
- Q Will you tell us why you are residing in Lewisburg Penitentiary?
 - A Well, I was arrested and convicted for the Mann Act.
 - Q Do you know what the Mann Act is?
- A Transporting ladies across the state line for the purpose of prostitution.
 - Q When were you convicted, sir?
 - A June 3, 19 -- June 6, 1973.
 - Q What sentence did you receive?
 - A Five years.
 - Q Have youbeen convicted of any other crime, sir?
- A Yes, I have been arrested for a lot of crime, pandering, assault, pandering again, assault, murder -- never got convicted of murder. I have been arrested for a lot of crimes, you know.

THE COURT: Mr. Bell, what is this word you use, panning?

THE WITNESS: Pandering.

THE COURT: Is that the same as pimping?

1483 Rell-direct Yes, sir, it is.

egs

A

2 3

1

4

5

6

7

8

9

10

11 12

13 14

15

16 17

18

19 20

21 22

23

24

25

THE COURT: All right. I understand.

What is your occupation, sir? Q

Well, I'm -- I used to be a pimp. And ex-pimp. A

When did you stop being a pimp? Q

After I got arrested. A

Which arrest was that, sir? Q

Pardon me? A

What arrest was that? Q

June 3 -- June 6, 1973. A

THE COURT: Excuse me, Mr. Bell, where were you convicted for violating the Mann Act?

THE WITNESS: I got convicted in New Orleans, Louisiana.

THE COURT: In New Orleans, Louisiana?

THE WITNESS: Yes, sir.

THE COURT: All right.

For how long had you been a pimp? Q ·

About ten years. . A

Where had you been a pimp?

All across the world, Atlanta, Chicago, Texas, A

Hawaii, California; wherever.

Was there a place where you were more often a pimp Q than other places?

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- A In New York, say.
- Q Can you tell us what a pimp is?
- A Well, a pimp is a man that sends the ladies out to work, he gets money from them, you know, they takes care of him.
 - Q What kind of work do these ladies do?
 - A Just sell their bodies, turn tricks on the street.
 - Q Do you know anyone in this courtroom, sir?
 - A I know the defendant, Bennie Hines.
- Q Can you point him out, sir, is he seated at the first or second table?
 - A Second table, I guess.
 - Q Is he the man closest to me or farthest from me?
 - A Farthest from you.
- MR. PADGETT: May the record reflect the witness has indicated the defendant.

THE COURT: Yes.

- Q How long have you known Bennie Hines?
- A About ten years.
- Q In what capacity did you know him?
- A Do you mean how close did I know him?
- Q Yes.
- A I know him real well.
- Q Did you have any conversations with him?

1

- A Had thousands of conversations with him.
- Q How many?
 - A Thousands of conversations.
 - Q For what period of time?
 - A For a period, the last eight or nine years we have been talking.
 - Q Where did you have these conversation?
 - A Almost everywhere I meet him at, you know, New York, in his apartment, on the streets, anywhere I meet him at we talk, we are really good friends.
 - Q Do you remember any specific conversations?
 - A You see, we been talking about pimping, and that's all we talk about, like two baseball players; they talk about baseball, we talk about pimping.
 - Q How frequent were your meetings with Mr. Hines?
 - A The longest I haven't seen him, it's been since I've been in jail, but otherwise I was seeing, we would be in the same town all the time, but in New York, see him every other day, sometime I be with him all day, you know.
 - Q Does the name Judy mean anything to you?
 - A Judy? Oh, Judy, yes. She is one of Bennie's ladies.

 I mean, I hit her once on the street I think back in '69 or '70,

 and she went and told Bennie about it, and --

MR. GALLOP: Excuse me. I think the witness is

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

testifying as to what Judy said. That would be hearsay.

THE COURT: I guess that's right.

Q Did you hit Judy?

A Yes, I did.

MR. GALLOP: I think what the witness did to Judy is highly irrelevant.

THE COURT: No, I think subject to connection, but I assume it is going to lead to a conversation with the defendant.

MR. PADGETT: It shall.

THE COURT: But before we go any further, Mr. Bell, so we get this on the record, when we talk about sending the ladies out to work, I assume that you are talking about the girls who go out and have acts of sexual intercourse with men?

THE WITNESS: That is correct.

THE COURT: All right. Now we've got that on the record.

- Q You said you hit Judy?
- A Yes, I did.
- Q Then she left you?
- A Yes, she did.
- Q What happened thereafter?
- A Well, she left and Bennie -- she went to see Bennie.

 Bennie came back and he called me over, and he asked me what

happened, you know, and I told him I smacked one of his girls because she insulted me, so he didn't get mad with me. He just told me, he said, if that bitch was out there taking care of my business she wouldn't have time to have nothing to say to you, you know, he said, she make good money but she is really flippy at the mouth, you know.

He said, she's a real good girl, but she's really flip out of the mouth. .

THE COURT: Flip?

THE WITNESS: Yes.

THE COURT: He said she was real flip out of the mouth.

Q Did Mr. Hines say anything about her making money?

A He said she make pretty good money. He said if she was out there taking care of his business she wouldn't have time to talk to me.

Q Does the name Debbie Peterson mean anything to you?

A Debbie, yes, she is a girl I was at Bennie's house one day and she came in from Minnesota to -- he told me he copped a new girl from Minnesota.

Q What do you mean by "copped"?

A He had just gotten her to be his woman.

Q Continue, please.

A So he sent her over to one of his ladies' houses,

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

to Connie's house. So I saw Bennie about a week later and I asked him what happened to Debbie, and he said that he had to get rid of her because she couldn't get no money, you know.

Q Did Bennie say why he sent Debbie over to Connie's house?

A Because he said that he kind of haveto teach her a little more about the game.

- Q Which game was that?
- A Whore game, drag game, any game he want to teach her.
- Q Do you know if Debbie Peterson was a prostitute?
- A She was.
- Q Do you remember any incidents when Mr. Hines discussed firing girls?
 - A Pardon me?
- Q Do you remember any incidents when Mr. Hines discussed firing a girl?

A He told me once about he was going to fire Diane because she couldn't get no money.

- Q Did he say how much money she was making?
- A \$237 a week. That ain't no money.
- Q Do you know what Diane did?
- A She sold -- I mean, she was a prostitute.
- Q Do you remember any instances when Mr. Hines was gambling?

A 1543 Bell-direct

egs

A Yes, we used to gamble a whole lot, one night we was gambling, we was lending each other money. So Bennie finally got broke and I told him -- he owed me about two-fifty and he said he charged it to the woman, charged the bit. That means charged the woman.

- Q Now, sir, these conversations that you have related to us so far, can you tell us approximately when they occurred, sir?
 - A Oh, most around '72, '73.
 - Q Can you tell us which ones occurred in '73?
- A The gambling occurred in '73, Debbie Peterson occurred in '73, and Diane occurred in '73 also.
- Q Does the name Tony Brewster mean anything to you?

 THE COURT: So Judy occurred in '72?

 THE WITNESS: No, that was back in '69 or '70. It's really tough about the year.
 - Q Does the name Tony Brewster mean anything to you?
 - A She was a girl I had once.
 - Q When you say you had, in what capacity?
- A She was my prostitute, she was my woman. She had left me and went to Bennie, you know. She -- I asked Bennie about it. Bennie told me that she wasn't doing nothing for him, she couldn't get no money, she was there wasting, I could have her back if I wanted to.

3

5

6

.7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

- Q Will you tell us when that conversation took place?
- A In '73.
- Q Did you ever discuss attorneys with Mr. Hines?
- A I got arrested back in December 15, 1972. He told me about some attorney named Detsky and Kasner. He recommended them to me because they would take care of all his bills for him, you know. He told me they was good lawyers, they had beat a case for him and he said all his ladies were using them and he told me they were good lawyers.
 - Q I didn't hear what you said.
- A He said he had used them, his ladies had used them, and he told me they were good lawyers.
- Q You mentioned the names of the attorneys. Does the name Kasner & Detsky mean anything to you?
 - A Those are the attorneys, that's who it was.
 - Q Did you ever visit Mr. Hines at any apartment?
- A Sure, I've been a couple of times on 34th Street, 77th Street, used to be on 34th Street all the time.
- Q Did Mr. Hines ever tell you anything about 34th Street?
- A No, but he liked the building because it was real; quiet and it was he liked living there.
 - Q Do you know that address on 34th Street?
 - A If I'm not mistaken it is 333 East 34th Street.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

Do you know if Mr. Hines lived there alone? Q

Him and one of his ladies, Elaine Byrd. A

What was that name, sir? Q

A

Elaine. A

Do you know her last name? Q

Byrd. I think the name is Byrd. A

Do you know what her occupation was? Q

She was a whore.

Did Mr. Hines ever discuss Elane Byrd with you? Q

THE COURT: Mr. Bell, was this word you last used

"whore"?

THE WITNESS: Yes.

THE COURT: All right. I wanted to be sure I understood.

Hines ever discuss Elaine Byrd with you? Q

I am -- somewhere around -- somewhere around June or July.

Which year, sir? Q

'73. He said that Elaine had got real hot in New York and he had to send her to Memphis, you know, and after Elaine come back, we was talking and he said that he was going to put her back on the streets because she couldn't make no money doing nothing else.

What do you mean, put her back on the street?

22

23

24

- A Put her back out there turning tricks.
- Q What do you mean, turning tricks?
- A Selling her body.
- Q You mentioned the drag game before. Will you tell us what that is?

A The drag game is a game where ladies don't turn a trick but, you know, she mostly talking with the fellow, playing him out of it, you know.

- Q Did Mr. Hines ever mention any such activities to you?
- A Well, once or twice he was telling me something about Connie had took off a \$40,000 sting.
 - Q What is a "sting"?

A A sting is when a lady gets money, you know, big money, other than prostitution.

- Q You mentioned Connie. Is that the same Connie that Debbie Peterson was sent to?
 - A Yes, it is.
 - Q Does the name Heidi mean anything to you?
- A Heidi, yes, I was at a birthday party one night and I went up there with Heidi, so we were there for awhile and Bennie came in and we was talking and he said that he could cop Heidi any time he could get ready, but he wanted to give a little respect to the man in his house.
 - Q Did he say why he wanted to cop Heidi?

A 158a Bell-direct

egs

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

A She made good money.

THE COURT: Heidi was a girl, one --

THE WITNESS: Yes.

THE COURT: -- one of Bennie's girls?

THE WITNESS: No, she belonged to someone else.

Q Do you ever remember a discussion involving Shirley and Connie?

A Shirley and Connie? He mentioned Shirley and Connie once, he mentioned they good money makers.

Q Do you know when that was, sir?

A Probably '72, '73, something like that. I don't know.

Q Do you know what occupation Shirley and Connic held at that time?

A They was -- well, they was drag girls, you know.

Q What do you mean by drag girl?

A Girls go from city to city, playing, talking, talk people out of money, I guess.

Q Does the name Lisa Dunbar mean anything to you?

A Oh, oh. Lisa Dunbar, yes. He said that he was going to fire Lisa Dunbar because she could make no money. She had been on the streets just jiving around, not taking care of his business.

Q Did you ever see Mr. Hines strike anyone?

23

24

'2A

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- egs
- Yes, I saw him slap Lisa Dunbar once. A
- Did he say why he was slapping Lisa Dunbar? Q
- Because she was out there playing around the street not taking care of his business.
 - What do you mean by his business?
 - Wasn't getting his money together.

MR. PADGETT: I have no further questions.

CROSS-EXAMINATION

BY MR. GALLOP:

- Mr. Bell, you say you came here from Lewisburg?
- A Yes.
- And you have been sentenced to five years in jail for a Mann Act violation?
 - Right.
 - When did you start serving the five years? Q
 - Somewhere around June '73. A
- Q And did somebody contact you with regard to Mr. Hines while you were in prison?
 - No, they didn't. ٨
- Were you ever contacted by anyhody with regard to your testimony here today?
 - Yes, sir, I was. A
 - Who contacted you? Q
 - Officer -- I don't even know his name.

1	egs	A 160a Bell-cross 219
2	Q	Somebody from the Internal Revenue Service?
3	. A	No, I think he's from the Narcotics Squad or something
4	Q	I see, and did they ask you about Bennie Hines?
5	Α.	At that time, no, they didn't.
6 .	Q	When were you first asked about Bennie Hines?
7	A	About three of four months ago.
8	Q	And who asked you then?
9	A	Who asked me about the first I think Mr. Clarke
10	asked me	about Bennie Hines first.
11	Q	Are you sure?
12	, A	If I am not mistaken, it was.
13	Q	When you say Mr. Clarke, is that the gentleman sitting
14	next to	Mr. Padgett?
15	. A	Yes, the one next to Mr. Padgett.
16	Q	And where did he discuss Bennie Hines with you?
17	- A	Up here, in the courthouse.
18	Q	In this building?
19	A	Yes.
20	Q	And how were you brought here, who brought you here?
21	. A	I came back on a writ.
22	Q	And do you know who was responsible for your coming
23	here?	
24	Λ. Λ	The narcotic agents.
25	Q	The narcotics agent?

24

25

egs

A Right.

- And Mr. Clarke spoke to you in this building? Q
- Yes.
- What did he tell you at that time? Q
- He asked me did I -- you know, did I know Defendant Bennie Hines, and I said yes.
 - What other questions did he ask you? Q
 - Would I be willing to testify. A
 - He just said would you be willing to testify? 0
 - A Yes.
 - And what did you say? Q
- I told him testify about what? And he asked me if A I know him and so many things he asked me about I knew, and I told him I would.
 - What things did he ask you about? Q
 - Like what I just testified.
- In other words, he asked you the same questions Q Mr. Padgett asked you?
 - No, not exactly. A
 - Well, generally the same questions? Q
- Generally, he asked me if we had a conversation. I A said yes. He said about what, and I said about the pimping and stuff like that.
 - So he asked you if you ever had any conversations

1	egs A 1623 BeII-cross 221
2	with Bennie Hines about pimping; is that correct?
3	Λ Yes.
4	Q And you related to him what you related in court
5	today?
6	A Not exactly the same words, but almost.
7	Q Almost?
8	A Yes.
9	Q Did you ever have any other conversations with any-
10	one about Bennie Hines?
11	A Yes, I hve.
12	Q With whom?
13	A With Mr. Padgett.
14	Q And when did you have a conversation with him?
15	A I don't know the dates, but I talked to him a couple
16	of times.
17	Q When you say a couple of times, do you mean two or
18	do you mean more than two?
19	A More than two.
20	Q Do you know how many times?
21	A No, I don't.
22	Q When was the first time you spoke with Mr. Padgett?
23	A I'd say several months, about several months ago.
24	Q Is that after you first met with Mr. Clarke?

About the time I met with Mr. Clarke.

16

17

18

19

20

21

22

23

24

25

2

Q So a few months ago; is that correct?

A Yes.

egs

Q What did you tell Mr. Padgett then?

A I couldn't remember the conversation, but I know it was concerning the case, you know.

Q Now, you mean to say you can't remember what you told
Mr. Padgett several months ago and you can remember your conversations with Bennie Hines in 19 --

MR. PADGETT: Objection.

THE COURT: Finish the question.

Q -- you can remember your conversations with Bennie Hines in 1969, 1972 and 1973?

MR. PADCETT: Objection.

THE COURT: I will sustain the objection.

A Yes.

THE COURT: I will sustain the objection as argumentative.

Q Do you recall the substance of your conversation with Mr. Padgett, the first conversation?

A Yes. Same thing Mr. Clarke said to me about if I know Bennie Hines.

Q Did you know Bennie Hines?

A Yes.

Q Did he ask you to testify for the Government?

A 1643 Bell-cross

egs

1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

A He asked me would I testify, yes.

Q And what did you say?

A I told him yes.

Q And did he ask you the questions that he would ask you in the courtroom?

A He didn't -- he asked me generally the same questions, something like that, pretty close to it.

Q And then you had another meeting with him; is that correct?

A I had several meetings with him.

Q Was it the same thing over and over again?

A No, not a routine.

Q Well, what else did you discuss?

MR. PADGETT: Objection.

THE COURT: No, I will permit any discussions between you and the witness.

MR. PADGETT: Your Honor, may we have a bench conference at this time, please; on the record, of course.

THE COURT: All right, Madam Reporter, at the side bar.

(At the side bar.)

MR. PADGETT: Your Honor, the reason I have objected is not to avoid having this witness testify concerning conversations concerning this case that I may have had with him, that

18

21

22

23

24

I think is fair game, there have been instance where this witness and I have discussed other cases, which I don't think are germane to the issue, and this is especially pertinent in vie of the fact that I believe Mr. Gallop represents some of the other defendants about whom I have discussed specific instances.

MR. GALLOP: I will rephrase the question.

THE COURT: All right.

(In open court.)

Q According to your testimony with regard to Mr. Hines, can you tell me what else you discussed with Mr. Padgett after the first meeting, at the subsequent meeting? Do you understand my question?

A No, I don't.

Q You have testified that you had a meeting with Mr. Padgett and you discussed basically the same thing you have discussed with Mr. Clarke; is that correct?

A Yes.

Q Now, you say you met with him several times after that. Now, concerning Bennie Hines, did you have any other discussions besides -- about anything besides what you have already discussed with Mr. Clarke and Mr. Padgett?

A No.

Q Did you ever have any discussions at all about receiving any consideration in return for your cooperation?

egs

A Yes, we had a discussion about that.

Q Can you tell me about that discussion?

A Well, he told me that he wasn't going to make me any promises but he would definitely write a letter to the judge who sentenced me to speak to the judge and tell the judge that I cooperated and he also told me that he wanted me to get on the stand and tell the truth, not to help him, not to try to help Bennie. He said whatever I do, tell the truth and if I didn't tell the truth he said he would send me to jail just as he would anybody else.

Q I understand that. Now, let me ask you this: Do you recall Mr. Padgett saying to you to give an answer similar to what you just gave, namely, that he told you to tell the truth? Did he ever mention that?

A I don't know anything about that; no, sir, not to me.

Q He never mentioned it?

A No, sir. I have enough sense myself to get up and tell the truth.

Q Now, let's talk about the consideration. What do you hope to gain by your testifying?

A Sir, this is one thing, I want to get out of jail.

I have been a criminal all my life, understand this, and I'm
telling the truth, so if I gain, all the same, all and good.

4 5

6

7

8 9

10

11 12

13

14

15

17

16

19

16

20

21

22

23

24 25

It's all and well, but I hope I gain something.

You hope you will get out of jail by testifying in Q court?

I hope it will help me in the long run, not even to get out of jail.

What other help do you expect?

What other help do I expect? Like I say, I've been a criminal all my life, do you know?

You mentioned that you have been arrested and convicted of several crimes, including assault, murder, pandering; did you ever give any false testimony?

We all lie sometime. I never told the complete truth.

- Did you ever lie under oath? 0
- No, I haven't. A

a never took an oath and gave false testimony or something under oath falsely?

- No, I haven't. A
- Never? Q
- No.
- Have you lied from time to time? Q
- Yes.
- Have you ever lied in any of the occasions in the Q hopes that you would not be either arrested or convicted of

a crime?

3

1

2

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A In my cases?

Q In your own cases.

A I can't remember, but that I just completely lied under oath.

Q When you say "completely lie," did you ever lie just a little bit to help yourself?

A I may have changed things around a little bit in my own case to help myself, but never completely lie.

Q When you say to help yourself, do you mean not to be convicted?

A Yes.

Q Would that mean so you would stay out of jail?

A Yes.

MR. GALLOP: No further questions.

THE COURT: Anything else, Mr. Padgett?

MR. PADCETT: Briefly.

REDIRECT EXAMINATION

BY MR. PADGETT:

Q Mr. Bell, you stated in the past you have lied to help yourself?

A Yes.

Q Have you ever lied under oath?

A No, I haven't.

7

3

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. PADGETT: No further questions.

MR. GALLOP: No further questions.

THE COURT: Thank you, Mr. Bell, you may be excused.

(Witness excused.)

MR. PADGETT: The Government calls Police Officer

James Rothstein to the stand.

JAMES ROTHSTEIN, called as a witness by

the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. PADGETT:

- Q Officer Rothstein, what is your assignment?
- A I am assigned to the Public Morals Division, Central Investigation Section, Pimp Squad.
 - Q New York City Police Department?
 - A Yes.
 - Q For how long have you been a police officer?
 - A Since 1965.
- Q For how long have you been assigned to the type of work you do now?
- A Since 1967 I have been assigned to the Third Division Public Morals, the Public Morals Division, P.M.A.D., and now I am assigned to Public Morals Division, Central Investigation Section.

THE CCURT: And you hold the rank of detective?

A 170 a Rothstein-direct

THE WITNESS: Yes.

- Q Can you tell us what your current duties include?
- A Gathering intelligence and investigating pimps and prostitutes involving in major crimes.
 - Q What sources of intelligence do you have?
- A I use the people in the street, such as restaurant owners, hotel managers, doormen, anything involved with the people who cater to pimps and prostitutes.
- Q In the course of this intelligence gathering, have you had occasion to speak to pimps and prostitutes?
 - A Yes, I do.
- Q Approximately how many prostitutes and pimps have you spoken to?
- A I have spoken to over a thousand prostitutes and 500 or more pimps and popcorn pimps.
 - Q Could you tell us what a popcorn pimp is?
- A A popcorn pimp is a pimp who is a fledgling in the business and probably has one girl, if he has any, or is looking to recruit a girl to work for him. And a pimp is the bigger player, he usually has a number of girls working for him which may range from one to 15, 20 or more, who do various things such as boosting, regular prostitution, they have drag games and other different endeavors to make money for the pimp:

A	171a
	Rothstein-direct

Q What do you mean by boosting?

A Boosting is when a girl goes out and steals diamonds, furs, credit cards and stuff like that.

- Q Do you recognize anyone in this courtoom?
- A Yes, I do.

egs

- Q Who is that, sir?
- A Bennie Hines.
- Q Would you point him out, please?
- A The man sitting at the table there.
- Q Is that the man immediately to my right?

 MR. GALLOP: I will concede it.

THE COURT: All right, identification is made and conceded.

- Q Have you ever spoken to Bennie Hines?
- A Many times.
- Q Approximately how many times?
- A From 1968 to the present time, over 100 times.
- Q Do you remember any specific conversations?
- A Yes, I have had a number of conversations with Mr.

Hines. I don't remember specifically the exact words of the conversations but a lot of them were dealing with the girls that were working for him as if they had been arrested or what kind of charged they had on him and if he would need a lawyer in the morning in court to get him out.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

Do you remember any of Mr. Hines' responses? Q

Yes, a number of times after I told him if he needed a lawyer, I would see him the next morning in court and a lawyer would be there to represent the girls.

THE COURT: Excuse me, Detective. Did I understand you to say that your duties involve pimps and whores who are involved in crimes?

THE WITNESS: Yes.

THE COURT: So that ordinary prostitution, not related to crimes, to other crime, ordinary pimping, is not a criminal offense?

THE WITNESS: It is a crime in the City of New York. THE COURT: But the principal interest, I take it, of the police department from what you have told us is in pimping and prostitution connected with crime?

THE WITNESS: Right.

THE COURT: So that you don't normally -- you didn't arrest him simply because he was a pimp?

THE WITNESS: No, no.

THE COURT: I understand.

Q Was there a time, sir, in your police career when you were associated and you were involved with the crime of prostitution as a police officer?

Yes, sir.

24

- Q And during that period of time did you have discussions with Mr. Hines?
 - A Yes, I did.
- Q Can you tell us approximately when that period was, sir?
 - A This would have been in 1968 and '69, primarily.
- Q Now, did you ever discuss police procedures with Mr. Hines?

A Yes, in reference to the appearance of the girls in court, and what the charges of the crimes were against him, if it was disorderly conduct the girls wouldn't need a lawyer and if it was prostitution or other related charges they would need a lawyer in court.

Q Did you just inform Mr. Hines of this or did he make some inquiries?

A At times I would tell him that the girls had told me to tell him and at other times he would ask me about it.

Q Did Mr. Hines ever discuss with you attorneys' fees?

A Yes, he did. At one time he stated to me that the lawyers were charging an awful lot of money for his cases and one of the girls that was with him at the time had told me that one of the --

Q No, don't tell us what somebody else said, just what Mr. Hines said.

eg

2

3

5

6

7

8

9

10

11

12

13

14

15

13

17

18

19

20

21

22

25

When you said the attorneys were charging too much for his cases, what cases do you mean?

A The cases of the girls that were working for him.

THE COURT: He furnished the lawyers for the girls who were arrested?

THE WITNESS: Yes.

Q Did you ever remember discussing the weather with Mr. Hines?

A Yes. If it was bad weather, a lot of times the girls would approach us and ask to be arrested so they wouldn't have to turn any money in that night, and we would tell them it was too cold for the girls to work and they were arrested.

Q What was Mr. Hines' response?

A He said they should be out there working anyhow.

THE COURT: You mean working on the streets picking up men on the streets?

THE WITNESS: Right.

THE COURT: Is that the idea?

THE WITNESS: Right.

Q Did you ever ask Mr. Hines if he had been to other towns, to other cities?

A Yes, if I wouldn't see him for a couple of weeks or a couple of days, I would inquire as to where he had been, and on a number of occasions he had told me he was out of town,

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

that things had been bad in New York or the heat was on and he would go out of town, then he would come back again.

- Q Did he say what he was going to the other towns for?
- A Not specifically what he was doing, but normally he would have his girls along with him when he went to these other towns.
 - Q Did you ever discuss gambling with Mr. Hines?
 - A Yes, I did.
 - Q Did he ever indicate to you if he had won or lost?
- A Well, he would tell me he had lost a lot of money, he would have lost a lot, but he would never give me any amounts on it or anything like that.
- Q Did you ever discuss with Mr. Hines a prostitute's conduct?
- A Yes. There was one girl in particular one time I told him if she didn't straighten out she was going to get locked up every night.
 - Q What did Mr. Hines say?
 - A He said he would talk to her.
 - Q Do you know who that girl was?
- A I don't remember the girl's name. I don't remember what her name was.
 - Q Do you know for whom she worked?
 - A Yes.

2

3

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

Who? Q

- Bennie Hines.
- Do you know what she did? Q
- She was a prostitute.

MR. PADGETT: No further questions.

MR. GALLOP: No questions.

THE COURT: All right, thank you, Detective.

(Witness excused.)

MR. PADGETT: Your Honor, there are several stipulations which can be entered into which will shorten the trial, I believe. Certain by Mr. gallop and certain by myself. In addition, there is one additional witness for the Government who is flying in from out of town and will be in at about 12:30 today. That would be the last Government witness and I think if we could put him on at two o'clock we could probably be finished by 2:15 or 2:30. He would be a very short witness.

I think we could best enter into those stipulations this afternoon as well, Your Honor, they should be fairly short, a total of five, no more than an additional two or three exhibits to be entered with those stipulations.

I would anticipate the Government resting this afternoon with one caveat which I would like to put on the record now.

As Your Honor is aware, the Government had intended

23

24

to call one further witness. Last week we had asked for a

among the missing. And I would ask the Court's permission

now for an adjournment of approximately one week in order to

locate the witness. If that is inconvenient to the Court or

to counsel, I would ask permission, if Your Honor is inclined

to reserve decision on this non-jury matter, and I don't know

if that is Your Honor's decision, but if he is so inclined, I

would ask the Court's permission in that case to re-open this

matter sometime prior to the rendering of the decision should

delay in order to locate that witness. That witness is still

MR. CALLOP: I would strenuously oppose that application. I think the Government asked for one day and I had no objection to it. I certainly have no objections to the short adjournments during the course of the trial, but to keep the trial in limbo in the hopes that some witness may show up I think is highly irregular and I would certainly oppose it.

that witness be located.

MR. PADGETT: Your Honor, I am not suggesting that the matter be kept in limbo or that if it is Your Honor's intention to reserve decision and request memorandums of law, that Your Honor's decision be reserved for any longer period than would normally require, but simply if it is Your Honor's intention to reserve decision during that period of reservation that I be allowed to re-open and introduce that one witness

22 23

should she be found. Should that witness not be found and Your Honor is prepared to render a decision, I would not ask for any further adjournments.

THE COURT: All right, why don't we finish the Government's case and then see where we stand.

MR. CALLOP: I understand that, but as long as we are discussing that now, Your Honor, what the Government is proposing is that the Government rest but not entirely. I'd be forced to proceed and then possibly they will decide to re-open their case which is just --

THE COURT: No. Mr. Padgett, I think, is telling
me he will rest at 2:15 or rest this afternoon at some time.

Then he says at the close of your case, if there is any -- I
don't decide the matter from the bench, but reserve my decision,
either to get a transcript or to look up law or for some other
reason, he would like to be able to move during the period
that I have the matter under advisement to re-open his case
in the event he finds the witness.

Am I stating it correctly?

MR. PADGETT: That is precisely correct.

THE COURT: I can't see a thing in the world wrong with that.

MR. GALLOP: I would oppose the application.

THE COURT: it hasn't been made yet.

MR. GALLOP: All right, I assume we will proceed at two o'clock. Is that correct?

MR. PADGETT: Yes, sir.

THE COURT: Mr. Padgett, do you have any cases on the question about affirmative proof of knowledge of the legal obligation to file returns?

MR. PADGETT: I will be prepared to submit cases to Your Honor this afternoon if that is convenient for the Court.

THE COURT: I wish you would. Of course, I have the Edwards case and I have I think the Thompson case, Judge Timbers' case in Connecticut, affirmed upstairs.

MR. CALLOP: I have prepared a memorandum of law on that point, Your Honor.

THE COURT: All right, have you got an extra copy?

MR. CALLOP: Yes, sir, I do.

THE COURT: Could you give us a couple of copies of that?

MR. SHAW: Your Honor, could I say one thing. It
may save some time because I chatted with Mr. Padgett about
this briefly during a recess. I think that he and Your Honor
were not on the same wavelength when you asked that question
earlier. I think he understood Your Honor's question to be
whether the Government had an obligation to call a witness

9

11

10

13

12

14 15

16

17

18 19

20

21

22

23 24

25

who would actually testify to a conversation, for example, with this defendant in which he said I know, I have an obligation to file, and I think that was the point he was making, that we maintain we don't have to put on such proof. But obviously on the element of wilfullness have to show circumstantially an awareness of the obligation. I usurped his function, but I thought it would save some time.

THE COURT: No, but I will have some serious questions, Mr. Shaw, about what I have heard so far as bearing on that.

Now, I haven't found any cases like this. In the Thompson case a return was filed. The filing of the return itself shows that -- I beg your pardon -- I am mixed up. In Thompson no return had been filed, but returns for earlier years --

Have you read Thompson?

MR. SHAW: I understand your point.

THE COURT: Well, I think you should. In Thompson, returns were filed for certain years, and then a period of time went by and no returns were filed, and of course there the Covernment had very little to prove as to the knowledge of the obligation by the defendant, and so the defendant testified and testified to advice from an accountant that there was a ten-year plan in effect under which for ten years a taxpayer could -- dida't have to report. And Judge Timbers

simply as a trier of the fact, that was a non-jury case, said I refuse to believe it, and convicted.

So, there is no realy problem of proof there. The Court of Appeals in affirming certainly approved Judge Timbers' square holding that knowledge of the obligation had to be shown and he concluded that it was shown.

In Edwards, there is a fascinating footnote to

Judge Hay's opinion, but there is a dissent in Edwards and it
is very mixed up. So that what I am looking for is a case
that says the circumstantial evidence is enough to show
knowledge by the defendant.

MR. SHAW: Your Honor, I don't mean to usurp Mr. Padgett's function. When we come back after lunch I am sure he will address himself to the problem.

THE COURT: No problem, we are all lawyers here.

MR. PADGETT: The Government could briefly mention a case to Your Honor, which might be of assistance over the lunch hour that would be Schipani case, which is cited in 1293 Fed. Supp. It is a 1968 Eastern District case. In that case there was no filing of a return. Cert. was denied. The Government's allegation was that the defendant had earned money from an illegal source and gambling and the Government in an opinion by Judge Weinstein showed through circumstantial evidence the wilfull nature of defendant's failure to file.

3 that case?

5 the citation.

8 Court.

. 16

MR. CALLOP: Is there a Court of Appeals decision in

MR. PADGETT: Yes, it was affirmed. I don't have

MR. SHAW: We will get it for you.

MR. GALLOP: Which I think are relevant to the District

THE COURT: All right. Then we will resume at

two o'clock.

(Luncheon recess.)

2

3

4

5

6

. 7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

AFTERNOON SESSION

THE COURT: I'm sorry I'm late. I am a big stickler for punctuality, but sometimes, I hope infrequently, I am late myself, and it is embarrassing for such a stickler for punctuality as I am.

Mr. Padgett, were do we go?

MR. PADGETT: I have one further witness who I believe is outside the door.

The Government calls Special Agent Watson.

DONALD M. WATSON, called as a witness

by the Government, was duly sworn and testified as

follows:

DIRECT EXAMINATION

BY MR. PADGETT:

- Q Agent Watson, by whom are you employed?
- A I am employed by the intelligence division of the Internal Revenue Service as a special agent.
 - Q Where is your current assignment, sir?
 - A Memphis, Tennessee.
- Q On Monday and Tuesday of this week, did you have a particular assignment?
 - A Yes, I did.
 - O Will you tell us what that assignment was?
 - A I was assigned to search the probate records of the

(Witness excused.)

MR. PADGETT: Your Honor, as I indicated, Mr. Gallop

24

25

entering of those three stipulation on the Government's part into the record, and the introduction of certain exhibits connected thereto, the Government would rest subject to request that should Your Honor take the matter under advisement we could during that period seek to reopen.

and I intend to enter into certain stipulations, and upon the

I must confess, however, that those stipulations are en route here right now and have not yet been examined by Mr. Gallop. They should be here momentarily.

THE COURT: Well, then, why don't we take a few minutes and let the clerk know when they are here, and mean-while, I should say my efficient law clerk has found an en banc dissent decision in Edwards which I hadn't realized existed and I ought to read it on this point, and I can take a few minutes while we wait to do that. This is on the question about knowledge of the obligation to file a return.

MR. SHAW: I think we have that. May we have the citation?

THE COURT: Yes, I agree you hadn't yet had a chance.

M2. SHAW: No, we don't.

THE COURT: It is pretty important.

334 F.2d 360.

It is the dissent en banc which reinstated the

conviction and affirmed it, but I haven't read the opinion.

I will take a few minutes while we are waiting for the stipulation.

(Recess.)

THE COURT: I think I gave you the citation to Edwards en banc, did I?

MR. PADGETT: Yes, sir.

THE COURT: And cert. denied 379 US 1000.

MR. SHAW: We have it, Judge, and both sides have read it.

THE COURT: All right.

MR. PADGETT: Your Honor, at this time the Government introduces as Government's 109 a stipulation to the effect that if Sunny Segalkin were called as a witness she would testify that she is the manager of J.I. Sofa, Inc., a real estate management corporation which manages a building located at 1 Sherman Plaza, New York, and she is familiar with the business record-keeping procedure and business records maintained by the J.I. Sofa Corporation and that she personally withdrew from the files of the J.I. Sofa Corporation Government Exhibits 110 and 111, which are various documents relating to the rental of an apartment and an application for that particular apartment.

(Government Echibit 109 received in evidence.)

3

5

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

25

THE COURT: All right.

MR. PADGETT: The Government then offers into evidence as Government's 110 the lease for Apartment 33-E at 1 Sherman Square referred to in Miss Segalkin's stipulated testimony, and as Government's 111 the application for that apartment.

(Government Exhibits 110 and 111 received in evidence.)

THE COURT: All right.

MR. PADGETT: The Government offers as Government's 112 the stipulated testimony of one Harold Gregory, previously called as a witness, that if Mr. Gregory were recalled he would testify substantially as he did on direct examination that he is familiar with the record-keeping procedure of and the records maintained by Engelman & Co. by virtue of his employment by Engelman as manager for some twelve years, and that he recognizes Covernment Exhibit 113 as an application for a lease, for a certain amount, at 333 East 34th Street, and that this record is maintained by Engleman in the ordinary course of business, and that the entries thereon were made at or about the times indicated.

(Government Exhibit 112 received in evidence.)

THE COURT: All right.

MR. PADGETT: Government Exhibit 113 is the application

CES

for an apartment referred to in Government's 112.

3

1

2

(Government Exhibit 113 received in evidence.)

4

THE COURT: All right.

5

MR. PADGETT: The Government would offer as Govern-

6

7

8

9

10

11

12

13

14

15

17

18

19

20

21

22

23

24

25

THE COURT W. C. 11 - 2

THE COURT: Mr. Gallop?

MR. GALLOP: Two points. Of course the name itself,

from the defendant Bennie Hines.

testify that in 1971 she was the manager of the Hotel Bolivar

located at 230 Central Park West and received as payments for

room rent of Room 11-K at that hotel the sum of \$600 in cash

(Government Exhibit 108 received in evidence.)

ment Exhibit 108 the stipulated testimony of Erna Ellis to

the effect that if she were called as a witness she would

THE COURT: All right.

MR. PADGETT: Your Honor, there remains one final issue. I know I indicated yesterday that the Covernment would seek to connect through further evidence Government's 18 and 19, which are the bank records of the Chemical Bank made in the name of Mr. Charles Daniel to the defendant. The Government at this time has no further witnesses and I would be prepared to argue that there has been sufficient connection to allow them to be admitted into evidence completely.

THE COURT: May I see 18 and 19.

MR. PADGETT: Yes, sir (handing).

Your Honor, but also the address 104 West 70th Street, there is nothing in evidence to indicate the defendant or anyone associated with the defendant was ever located at that address. I would therefore move to strike Exhibits 18 and 19.

MR. PADGETT: Your Honor --

THE COURT: Yes?

MR. PADGETT: May I be heard, sir.

It is true that there is absolutely no evidence in the record to connect the defendant with the address listed on the application. There is, however, ample evidence to connect the defendant with the name Charles Daniel. Your Honor will examine the items introduced in evidence which were stipulated to, I believe they are the records of the Simon Furniture Company, there is an indication that during the period 1968 there was furniture delivered to Mr. Ben Hines in Apartment 4-E at 400 East 77th Street. That was the period of time that Mr. Charles Daniels was the lessor of that particular premises.

THE COURT: This is not Daniels, this is Daniel.

MR. PADGETT: I'm sorry.

THE COURT: D-a-n-i-e-1.

MR. PADGETT: If Your Honor is not inclined to accept
it on that basis, I would suggest to the Court it can be
accepted under the theory that the Government has expended
every reasonable effort to locate the bank accounts and financial

22 23

resources of the defendant under whatever name he utilized,
that is to say with the evidence that the Government has searched
the banks in every conceivable alias utilized by the defendant
or aliases which approximate that, and that is the best we
could do with respect to that evidence.

THE COURT: For the moment, I am going to reserve decision on the motion to strike of Mr. Gallop.

MR. PADGETT: Your Honor, the Government has no further evidence and the Government rests.

THE COURT: All right. The Government rests.

Mr. Gallop?

MR. GALLOP: At this time, Your Honor, I move for a judgment of acquittal based upon the fact the Government has failed to make out a prima facie case. I think it was clear from the outset of this trial that the issue would be whether or not the Government had, one, sufficiently established the expenditure theory in order to show --

THE COURT: What is the expenditure theory? I asked when we started was this solely a net worth case, and I was told it was a combination of net worth. And I said, what is the other theory. And then I think Mr. Padgett told me it was an expenditure theory. I have looked it up. I find no such theory in the books. The word I was looking for was the bank deposit theory.

MR. GALLOP: Right.

THE COURT: There are two theories, the net worth and the bank deposit theory. I never heard of an expenditure theory. There may be some cases, but I haven't been cited them.

MR. CALLOP: The expenditure theory, as I understand it to be, is simply an extension of the net worth theory wherein the poof shows --

THE COURT: I think the Government would agree there is no basis whatever for the net worth theory here. The Government promised that it would prove that at the beginning of the tax year -- What's the first year, 1968?

MR. GALLOP: That is correct.

THE COURT: -- the defendant had a zero net worth.

There is no proof of that. I guess the Government concedes.

There is not the slightest proof, not a scintilla of evidence.

MR. PADGETT: The Government's position would be we have asserted every reasonable effort to prove it and were not able to prove the net worth at the beginning or close of the year.

THE COURT: So the net worth theory is out and there is no bank deposit theory?

MR. GALLOP: No, Your Honor, there is none. So I agree.

THE COURT: It seems to me the Government's case has

to

to be thrown out because there is no proof he had more than the minimum amount of income.

Without getting to the difficult question of law on which I have been concentrating thus far, namely, whether he has to be shown to have knowledge of the requirements of the income tax law that he file a return, which is that his gross income is more than the minimum amount for each year --

MR. GALLOP: I certainly -- I think at this point,
Your Honor, I can honestly say I agree with you. I don't think
the Government has shown by direct proof --

THE COURT: Mr. Padgett, where does the Government have proof that in the year 1968 the defendant had gross income of more than, what is it, \$1700?

MR. PADGETT: Your Honor, I believe that the Government in its opening statement never indicated that, except in several isolated instances we would show receipt of monies by the defendant. We did, however, indicate that we would show expenditures of money by the defendant and ask the Court to conclude from the expenditures and from the fact that we had at least attempted to determine whether or not there were other reasonable sources of income, that the defendant had in fact received income which would allow him to make the expenditures.

THE COURT: Yes, but that's assuming that at the start of the period, of the counts, in this information, you

egs11

had proved that he had a zero net worth, so he had absolutely nothing to start with, but for all I know he may have had \$100,000 in cash on January 1, 1968.

MR. PADGETT: Yes. Your Honor is referring to what is known as the black box theory, did the defendant have prior to the commencement of the search any assets from any source which would allow him to make those expenditures without the necessity of receiving income.

THE COURT: That's right.

MR. PAD IT: I believe it is not the Government's obligation to show, to negate completely the possibility of such sources of funds. It is the Government's responsibility under case law, Your Honor, and I will be glad to prepare a memo to that effect, it is the Government's obligation to indicate to the Court that it has exerted every reasonable effort to determine what the defendant's possible sources of funds were, and I believe the Government has sustained that burden, Your Honor.

THE COURT: Well, in other words, in every criminal case, if the Government proves that it has made every reasonable effort to secure evidence to prove the guilt of the defendant, and just hasn't been able to do it, then the Court has to convict him because the Government has done everything it could to convict him but it couldn't do any more than it did, so

. 21

therefore he is guilty?

MR. PADGETT: No, sir. The Covernment's position is the Government need only assert its best efforts to determine the zero starting balance, to determine whether or not the defendant had a black box full of money someplace before 1968 and from that withdrew funds to finance himself during '68 through '72. Once we had asserted our best efforts, our reasonable efforts as demonstrated by the evidence to show that there was no cash hoards, so to speak, and we do show beyond a reasonable doubt that the defendant did make expenditures, and we do show beyond a reasonable doubt his efforts to conceal himself and to conceal the sources of his income, and we do show beyond a reasonable doubt the wilfull nature of that and beyond a reasonable doubt that he did not in fact file, the Covernment has sustained its burden. I am not suggesting ---

THE COURT: I must say, Mr. Padgett, to me that sounds like nonsense. You are telling me that in dolland against the United States, where the net worth theory has been definitively laid out, that they say that the Government does not have to prove the net worth of the defendant at the beginning of the taxable year; all it has to do is to show that it has done the best it could to prove the net worth of the defendant at the beginning of the taxable year and having proved that, it has made its best effort, the Court can therefore find that he had

zero net worth? To me I must say with all due respect that

apologize if that is the impression I gave. Perhaps what I

intended to say was that the Government by the presentation

proven he was not employed for a period of time prior to the

starting point of the years. We have shown that he did not

produce any evidence of his net worth. Now you are telling

have an inheritance that we can discover.

of its evidence to the Court has shown that there was no

discernible source of income for the defendant. We have

MR. PADGETT: I am not saying that, sir, and I

sounds utterly nonsense.

2

3

4

5

6

7

8

9.

10

11

12

13

14

15

16

17

18

19

20

21

Court to conclude.

23

24

25

me that you have evidence from which I should make a finding of fact that his net worth at the beginning of 1968 was zero.

MR. PADGETT: We did not bring affirmative evidence

of his net worth of those years. We have brought circumstantial

infer that his net worth was such that the Court could conclude

the impossibility of a cash hoard. That's what I am asking the

evidence allowed in Holland which would allow the Court to

THE COURT: I thought you told me that you didn't a

MR. CALLOP: Your Honor, may I just make one comment, because perhaps I am in error as to the nature of the evidence. But in my cross-examination of the witnesses, I believe the farthest any witness went back, with the exception of the

witness who came from Tennessee, was 1966. There was no attempt to find out any net worth of the defendant prior to the time he came to New York, which was in 1967, where I indicated that there might have been an inheritance in the county where his parents lived. The Government made, for the first time made an effort, and lo and behold, they came up with an inheritance, so I think if the evidence shows anything it shows no attempt was made.

THE COURT: Would I be justified in finding that the defendant was a pimp in 1967?

MR. PADGETT: Not only would you be justified in finding that, sir, you would be justified from the evidence in finding that he received monies from his activities as a pimp during those years.

THE COURT: 1967 is not a count that is here involved, is it?

MR. PADGETT: That is correct, sir.

THE COURT: Well, then, since we know that the morals of the country are getting worse, his earnings through the girls in 1967 could for all I know have been enormous. They could have amounted to \$100,000.

MR. PADGETT: That is correct.

THE COURT: So he starts off January 1, 1968 with \$100,000.

MR. PADGETT: Except, Your Honor, we have shown affirmatively that the defendant did in fact engage in that very same business, which earned him \$100,000 in '67,: in '68 through '72, and following Your Honor's logic, he would have earned at least \$100,000 in those years. That is ample evidence, Your Honor, that there was income received by the defendant during those years.

THE COURT: Yes, but for 1968 I've got to find beyond a reasonable doubt that he had nothing to start with, and that he earned more than X dollars in that year, and I am telling you that I can't find that he had nothing to start with.

MR. PADGETT: Perhaps I am confused, Your Honor.

If Your Honor concludes that he did earn monies during any of those tax years, the zero starting point is immaterial. The zero starting point is only material if Your Honor decides to conclude upon the expenditure theory that since there were expenditures there must have been income. But the Government has really proven its case on two grounds: One, the expenditure which --

THE COURT: Well, expenditure is out, because that could have come from earnings in 1967.

MR. PADGETT: In that case, Your Honor, the Government submits that we have shown that the defendant was engaged in the regular course of business during the years '68 through '72

2 and

3

1

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20 21

22

23

24

25

and the Government has shown that that business brought him certain income. Whether that business be thatof prostitution or that business be that of receiving monies from confidence women or drag women, I think it is referred to by one of the witnesses, it is immaterial. The defendant received income.

THE COURT: But you have not proved how much he received.

MR. PADGETT: We have proved, Your Honor, that the defendant received on one occasion \$232,000 -- excuse me, \$40,000. We have also indicated that on one occasion the defendant who, if you would believe other evidence, was regularly engaged in the business of promoting prostitution, struck one of his prostitutes for failing to bring him in one week's time more than \$300. I think it is perfectly reasonable for Your Honor to infer a man who is engaged in the business of prostitution and employed thenumber of prostitutes referred to by Mr. Beli, did in fact receive, if he only received \$300 in one week's time, he must have receiving something more than the minimum required by law during the 52-And there is ample evidence, Your Honor, that week period. Mr. Hines engaged in the business of promoting prostitution for the full five-year period. There is ample evidence to indicate that in one week's period, in that five-year period, he was unhappy with one girl of many who provided him with

egs17

only \$300.

I think Your Honor can reasonably infer from the totality of the evidence that Mr. Hines was engaged in a continuing course of conduct which was in fact a lucrative course of conduct, and which in fact gave to him sufficient income to require him to file the income tax form.

THE COURT: Well, if I thought it were truly necessary to study the record and the stipulations of the Government in this matter, I would ask for the stenographic transcript and I would study that and I would study the detailed stipulations, but I don't think it is necessary. I have no doubt whatever that the defendant is in a general sense a bad man, I think that although there has been no proof of it, I think it is a reasonable assumption that he had more than a minimum income during these years.

I think that it would also be a reasonable assumption that he knew that he ought to file an income tax return, and of course the reason that he didn't file the income tax return was that this income was from illegitimate sources and he failed to do so.

On the other hand, evidence on which the Government relies to show that he had knowledge of the legal obligation to file the income tax returns, namely, concealment, is consistent with a desire to conceal the sources of his income

2 from

from the New York City Police Department or the police authorities of the City of New York where his occupation was illegal and where he was certainly aiding and abetting an illegal activity of the girls employed by him.

Therefore, even if the concealment, without more, could be evidence of the defendant's knowledge, in this case it seems to me the evidence is equivocal, and I would have to say that I couldn't find beyond a reasonable doubt that the defendant knew that he had to file an income tax return, and so far as I know, there has never been -- I have not found a precedent for this type of case. All the cases that I have read, and I have read quite a few on this point, are cases where tax returns had been filed in some period, as I indicated earlier. And then, as to the Government's proof that in each count the defendant had received income which should have been reported on his tax returns, I couldn't find that beyond a reasonable doubt, so I really think that I have to acquit the defendant on all counts.

MR. SHAW: Your Honor, may I be heard very briefly?
THE COURT: Of course.

I think the Government's case is about as weak as

I have ever seen, Mr. Shaw. I know it is a hard case to prove.

It is a hard case to prove. But that doesn't remove any responsibility. Of course I will hear you.

7 8

5

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. SHAW: No question that doesn't affect the degree of our burden.

Your Honor, it seems to me listening to the Court there is no question that the problems Your Honor has are questions of legal sufficiency, they are not questions of credibility or anything of that kind.

THE COURT: No, no.

MR. SHAW: I would like to ask that we be permitted to brief both the points concerning the Court: One, the question of whether the so-called expenses theory has any value as put forth in this case, and, two, the question of wilfullness. I confess to myself being an expert on the merits of these two questions, and I think frankly we should have had both of those things briefed before now. But I think we can do it quickly and I believe it to be accurate. believe it to be accurate that the extent to which the Government must on its direct case exclude non-income sources which could account for expenses made in tax years, the extent to which the Government must exclude that on its direct case, is affected by the extent to which it does prove a probable source of income, that is, the Government's burden to exclude possible non-income sources is greatest in those cases in which it doesn't come forward with a theory of probable income.

Now, if there is one thing that we are strong on

in this case it is that this man undoubtedly earned income on a regular basis in the tax years in question from prostitutes, taxable income. Your Honor is right that we can't put a dollar figure on it. We haven't been able to produce a prostitute. The woman that we wanted to call and havenot been able to locate is a prostitute and her testimony, although very brief, would in fact relate, I think -- Mr. Padgett, correct me if I am wrong -- to a proposal he made to her to be on his -- part of his group at a certain amount of earnings, so it would add to the small amount of proof we have through Bell about the fact that this man fired a girl because she was only earning \$200 a week. We can't prove the precise amount but we certainly have proved that this fellow was earning old fashioned taxable income in the tax years in question.

Now, I believe it is accurate that when we do a good job of that, which under the circumstances I think we have done, or done a sufficient job, a sufficient job of proving that the man did have taxable income, I believe it is true that our burden to exclude non-income sources to account for expenditures which we have proved is less.

I believe that to be accurate. I'd like to have a chance to brief it. As I listen to Your Honor, I think that we may be really dead wrong on our sufficiency here, but I am

a 15

not sure of that, and since it is a simple question for us even to satisfy the Court on it or not satisfy on it. I ask that we have that opportunity, either there are cases that are going to say that what we have done here is sufficient or there are not, and I think frankly, I have taken for granted and I think Mr. Padgett being new to tax cases as well, I think we both more have taken this for granted than we should have, on account of the rigorous review procedures within IRS, this series of cases has been reviewed as they all have up the line, and I know that the tax division people were satisfied that there was sufficient so-called starting point proof here. But as I hear Your Honor talking about your reaction to it, it is obvious what is bothering us, sir. In any event, I think we can come up with an answer quickly and I urge the Cort not to hand down a verdict --

THE COURT: If you tell me the Government wants.

more time, I certainly am not going to be hasty about it.

This is a fairly recent case.

Now, Mr. Gallop, I have forgotten whether you rested or not.

MR. GALLOP: No, I hadn't, Your Honor.

THE COURT: We had better clear that up before we leave this afternoon.

MR. SHAW: May I add one other point, if I may.

Mr. Gallop, is that okay?

finish the taking of evidence.

4 to dismiss.

All right, I will reserve decision on your motion to dismiss, so we'll talk about the program afterwards. Let's

THE COURT: Wait a minute. this was on your motion

MR. GALLOP: I have two stipulations.

THE COURT: A motion for judgment of acquittal?

MR. CALLOP: That is correct.

THE COURT: All right, I will reserve decision.

MR. GALLOP: I have two stipulations. One stipulation I have prepared indicates that United States of America has no record of any tax return on behalf of the defendant, the United States of America will not introduce any W-2 form and the United States of America will not introduce a 1099 form.

These are forms which indicate the receipt of income. I would just call upon the Government to further stipulate that they have nothing in their records, no W-2 forms or 1099 forms in their records that they know of pertaining the the defendant.

MR. PADGETT: Your Honor, the Government has not offered and I think the Court can be assured if we had them we would offer them. I am not about to stipulate they are buried someplace in Martinsburg, West Virginia. There is not something that cannot be found after an enormously long and

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

23

24

25

complex search.

MR. GALLOP: I will accept Mr. Padgett's representation.

THE COURT: Wait, what is the representation? MR. CALLOP: There are no tax returns, W-2 forms or 1099 forms in the name of the defendant,

THE COURT: No tax returns, no W-2 forms, no 1099's? MR. GALLOP: Right, to be offered in evidence on behalf of the defendant Ben Hines.

The other stipulation --

THE COURT: Wait. So the stipulation is that there are no tax returns, no W-2 forms and no 1099 forms of the defendant. Is that it?

MR. GALLOP: Yes.

And the other stipulation is that with regard to all of the forms and applications submitted -- I'think I am better off reading it.

"Any employment set forth in any document introduced in evidence is false or fictitious. The Government has no knowledge of any wages or salaries received by the defendant for the years set forth except in Government Exhibit 24," and Government Exhibit 24, if you recall, was from the Social Security Administration and indicated in the years 1960 or '61, '61 and '62, several hundred dollars were earned as an attendant

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

in a pool room.

THE COURT: Is that going to be an exhibit?

MR. CALLOP: Yes. All monies claimed to have been obtained by the defendant for the years set forth in the indictment are from the illegitimate sources testified or stipulated to.

Again, the point of this is simply that there is on some of the applications indications of employment at an automobile agency and a consulting agency, and rather than bringing in witnesses to say that he was not employed there, the stipulation will answer those.

THE COURT: Are both those to be in evidence?

MR. GALLOP: Yes, sir.

THE COURT: All right. Then, Mr. Clerk, would you take them and mark them.

What is the next Defendant's exhibit?

MR. CALLOP: The defendant would then rest.

(Defendant's Exhibits D and E received in evidence.)

THE COURT: And the defendant rests?

MR. GALLOP: That is correct.

THE COURT: Any rebuttal?

MR. PADGETT: No rebuttal.

THE COURT: All right, now, then, let's talk about what the Government wants to do. I have indicated my views

24

but if the Covernment wants more time -- I can't believe, Mr. Gallop, it does you really any harm. The defendant is not in custody.

MR. CALLOP: Obviously, though, his concern about the final outcome is such I would only ask the Court to be as. brief in time as possible.

entertain seriously conviction of the defendant unless I have a transcript of the record. I mean, I have made notes, but this involves counts relating to separate taxable years. I would hope the Government would go through the evidence and separate it out by taxable years and relieve me of the burden, but at some time I am going to have the burden of taking the testimony and the exhibits and relating them to each taxable year to reach a conclusion.

Now, how can I possibly do that without a stenographic transcript?

MR. PADGETT: Counsel and I had discussed earlier this afternoon the question of breaking the figures out as Your Honor has indicated. I will undertake to do that for the Court. That should not be a lengthy process, though.

THE COURT: How are you going to do it without a transcript?

MR. PADGETT: I believe I can do it from the

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

exhibits and from the stipulated testimony, Your Honor.

THE COURT: So that when I take it to decide, I don't have to consider any of the testimony?

MR. PADGETT: Might I suggest --

THE COURT: When you put it off as I assume you will for a period, I can't carry all this in my head. I will turn to other things, other trials, and then I pick it up, I have no record of the testimony.

MR. PADCETT: Your Honor, I am not suggesting that the testimony would not be of assistance to Your Honor. course it would. All I am suggesting is with respect to the breakout of the figures for the various years, I think that we can prepare a chart for Your Honor which I can do fairly expeditiously which would show the alleged expenditures by the defendant during various years and also the alleged sources of income during those particular years.

MR. GALLOP: May I just be heard on that point.

I certainly can understand the first premise, the expenditure premise. I don't know what stipulations there are with regard to sources of income. Might I say another thing, Your Honor. I haven't made my motions yet at the close of my case. I would move again to dismiss all counts on the grounds the Government has failed to prove the guilt of the defendant beyond a reasonable doubt.

Having said that, Your Honor, it appears that Mr.

Shaw's argument and purpose for submitting a brief is to approach the issue of whether or not the Government expenditures theory was sufficient to make out a prima facie case or even convict the defendant. But the Court in its remarks also indicated that it felt on the question of knowledge there was a grave issue there as to whether or not the Government proved knowledge beyond a reasonable doubt, and I believe I understood the Court to state that on that issue he believed the Government has failed in its proof.

THE COURT: Yes. All I am saying is that I am not changing my views on this, but what I am saying is that I am not going to be precipitous, we don't have a jury and if the Government wants more time, Mr. Padgett and Mr. Shaw will get it, because I can't believe that it hurts the defendant.

MR. GALLOP: No. To complete my thought, my thought is if the Government were to brief the issue of expenditures, there would still be the issue of knowledge which would also have to be briefed by the Government, because at least I thought the Court indicated that on both counts they would have to be dismissed.

MR. SHAW: If I may, Your Honor, that's what I had in mind when I stopped a few minutes ago and asked for more time. Mr. Padgett and I have addressed ourselves to that question

Q

19 ,

over the luncheon recess. I am pretty confident that we can satisfy Your Monor on that question. That is, that with respect to the Government's burden of establishing wilfullness in a failure to file case in which there is no proof of ever having filed any tax returns, proof of the traditional type of Spies type proof of concealment of dealing in cash, of using false names, et cetera, is sufficient to establish the element of wilfullness.

THE COURT: And I have pointed out I don't think it is here, because it is equally consistent with concealing it from the state and local authorities.

MR. SHAW: I understand. Number one, I would disagree with the Court on that and I would point out the testimony of the police officer who testified here to I think 100 conversations with Hines over the last five or six years in which it was open between them that Hines was a pimp. There was no need for Hines to deal in money orders in his money transactions or indeed for Hines to have a series of five names with respect to the local authorities. I think that the proof we have here cuts directly on the question of whether he likes it to be known that he is an income earner, and I don't think that matters a whit with respect to his relationship with local authorities.

Now, he could conceivably take the stand in this case

21 22

or could have, and have testified that that is precisely why
he did it and that would have raised an issue of credibility.
But if we are able to show a pattern of concealment of the
receipt of income, then even though it happens that the man
was involved in illegal conduct, I think in the context of
this case we have met the burden.

Otherwise a man doesn't -- otherwise a man in an illegal kind of enterprise which he wouldn't like to have local authorities know about anyway can never file an income tax return and can be smart enough never to admit to anybody that he knows about the obligation and can walk away from it.

I think there is a point as to whether circumstantial proof of concealment type conduct is sufficient, and I want to argue that to the Court in a memo of law.

THE COURT: You mean there is no fact issue, then, this is just a legal question?

MR. SHAW: I really think it comes to that. But I wanted to, if I may, come back to Your Honor's concern about the transcript. I think that between us and Mr. Gallop, we can prepare for the Court a proposed finding of fact, if that is the simple way to put it, which would itemize what the proof has been with respect to the man's expenditures and which would itemize what the proof is with respect to efforts to determine whether he had any sources of money as of

January 1, 1968, and I think we can do that in this two-day trial in a way which is going to -- which Mr. Gallop and we are pretty much going to be able to agree on, so that I don't think it is either going to take very long or is going to require the Court to spend a great deal of time on the testimony in order to focus on the facts to the extent that they are relevant.

THE COURT: I just can't imagine that this could be decided, if I have to go into the detail in less than two weeks work solid by me. You've got five taxable years. You've got many different apartments. You've got rent payments. You've got payments for part of a year. You've got the purchase of an automobile.

In other words, you are telling me, Mr. Shaw, that it is worthwhile for me to take all the time that is required in order to do justice to the Government's position and without the aid of any stenographic transcript?

MR. SHAW: I don't mean that.

THE COURT: All right, I am willing to do it, that's my responsibility.

MR. SHAW: I don't mean that.

THE COURT: But you had better make it awfully good because I want the record to show that my very strong inclination now is to acquit the defendant.

NO CHAIL

MR. SHAW: Very well, sir.

THE COURT: And I propose to do it unless you demonstrate to me, conclusively, practically, that there is a reasonable doubt.

MR. SHAW: If I may, sir, I don't mean to quibble about the testimony. We will order the testimony if Your Honor wishes it.

THE COURT: I am not going to force you to do it.

Do it or not as you see fit. I just think it is one of the poorest cases that I have heard in eleven years. One of the poorest. One of the poorest.

MR. GALLOP: I believe you said something which I would just like to correct the record for. I believe you asked Mr. Shaw to prove to you conclusively that there is a reasonable doubt.

THE COURT: I mean that he has proved his case beyond a reasonable doubt.

MR. SHAW: We all understand it, Judge.

THE COURT: Of course.

All right. How much time do you want for this demonstration? I want to be fair to the Government.

MR. SHAW: I appreciate that, sir. I think we'd like to ask for ten days, if that's not -- from the point of view of either side.

egso

THE COURT: All right, and Mr. Gallop, may I see -MR. GALLOP: May I make a suggestion, Your Honor,
in order to save myself some work, but I am supposed to
commence a trial in Brooklyn on the 13th. If after the
Government has submitted its memorandum, if you feel it is
necessary for a reply, if your office would notify me.

THE COURT: All right, let's wait.

Mr. Shaw, you want ten days? Ten days by the calendar I figure is May 20. Do you want more than that? That is a Monday.

MR. SHAW: If it is convenient for us to submit two weeks' from today, that would be helpful, but I don't think we need to ask for a great deal of time. I appreciate that.

THE COURT: All right, May 22.

Now, you are going to submit a memo, and I suppose you will then supply me with all the Covernment's exhibits?

MR. PADGETT: Yes, sir.

MR. SHAW: We will, sir.

THE COURT: All right. And then I will study those, and let Mr. Gallop know if he will reply.

MR. GALLOP: I assume the Government will serve me at the same time that the Court receives the memo?

MR. SHAW: What we are going to try to do, as a

matter of fact, is to get something to Mr. Gallop long in advance of that so that if it is convenient for him, he an review it and if he has no dispute with it, he can so indicate. We will certainly serve him on the day of the order.

MR. GALLOP: I probably will be on trial.

MR. SHAW: We understand, sir.

THE COURT: All right. Anything else?

. MR. PADCETT: No, sir.

THE COURT: All right, then, Mr. Clerk, we will be in recess.

(Adjourned.)

A 216a

1	jqrf
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	UNITED STATES OF AMERICA, :
6	Plaintiff, :
7	-against- : 74 Cr. 268
8	BENNIE HINES,
9	Defendant. :
10	х
11	BEFORE:
12	HON.INZER B. WYATT
13	District Judge
14	New York, New York July 3, 1974 - 3:00 p.m.
15	APPEARANCES:
16	EDWARD M. SHAW, ESQ.,
17	CHARLES E PADGETT, ESQ., Assistant United States Attorneys
18	KALMAN V.GALLOP, ESQ.,
19	
20	
21	
22	
23	
24	

25

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: Good afternoon.

MR. SHAW: I hope you will excuse that delay. The circumstance was an unusual one. At the request of the defense attorneys in another nonjury case of this kind that Mr. Padgett is trying a hearing was held. Mr. Padgett had to be a witness and I had to be there to represent the Government. We got word down before 3:00 o'clock and Mr. Padgett is still up there but I will cover for him, sir.

THE COURT: That is very good, Mr. Shaw. I suppose under the present inequitus system these things can't be avoided.

May I first give back to the defendant the defendant's exhibits and give back to the Government the Government's exhibits. And here are the stenographic minutes.

I suppose they go to the Government. I don't know whose they are.

Unfortunately, I have had to spend an enormous amount of time on this matter and it was my profound hope that I am not favored with any such matters in the fucure.

There are five counts charging the defendant with violation of Section 7203 of Title 26 of the United States

Code in that for the calendar years 1968 through 1972 he failed to file federal income tax returns. The trial took place on May 7th and 8th after written waiver of trial by jury.

After the close of the trial I at that time strongly indicated that I felt that the Government had failed to prove the charges but I think that my feeling was due primarily to the fact that at that time I had insufficient knowledge of the expenditure theory of proof of income.

Our discussion was of stenographic minutes 250 and following.

Another difficulty, and I have to say this,
Mr. Shaw, more in sorrow than in anger, it was not the
primary difficulty but one of the difficulties was that
it just seems to me that the Government presented its
case in an incredibly sloppy fashion. That has greatly
increased my burden.

For example, in showing the result of the investigation of the bank accounts the Government's memorandum at page 7 shows or states that the Government searched some 44 New York City area banks.

There is no citation to the record. I had to plow through every page because first the Government

1 jgrf.

put on a witness at an early stage of the trial who testified that there were 28 banks who were investigated. At a wholly different point in the trial, some time later, another witness testified to another series of investigations which I believe finally made the 44. But without any citation at all to the record I have to sit down painfully going through page after page of this transcript.

Then the Government says that the investigation disclosed only one account in any of the names which Hines was known to have used. That isn't true. There were two accounts. One was in the name of Hines at, I believe, the New York Bank for Savings and another one in the name of Charles Daniels at the Chemical Bank New York Trust Company.

MR. SHAW: I think that one was excluded because it wasn't the same name.

THE COURT: It was Charles Daniels.

MR. SHAW: I may be wrong.

THE COURT: Let me have the Government's exhibits.

MR. SHAW: I thought we didn't get that in because the name he used was Daniels and that one was Daniel.

THE COURT: Government's Exhibit 18 and the ID is crossed out. I can only go by the record.

MR. SHAW: My strong memory is that if we got that in at all it was your Honor stating on the record that it was worth nothing because it wasn't the same name. We thought it was helpful but because the name didn't have an S your Honor indicated that it was virtually worthless.

I am sure that is why we didn't refer to it in our brief.

THE COURT: When I had to go painfully through these exhibits I found Government's Exhibit 18 and I think 19 which relates to the same account. It appears to be in evidence. Of course, I can't carry these things in my memory.

Then I don't understand, Mr. Shaw -- and as I say this in sorrow and not anger. Certainly the public interest is not going to be affected by the fact that the constable blunders but the Government cites Schippani for instance, page 82, 93 F. Sup. 156, Eastern District New York 1968, affirmed 362 F. 2nd 825 Second Circuit 1966.

So obviously it occurs to me how can the Court of Appeals affirm a judgment two years before it is rendered? It is obvious that it isn't so. The affirm answer is at 414 F. 2nd 1262. And the same mistake is repeated on page 13 of the Government's memorandum.

7 8

But you have to realize that when this kind of thing happens, and of course this paper mountain which the Government presented adds to the burden, and what I would consider these essentially sloppy presentations are made it runs a trial judge crazy because I have to painfully go through every piece of paper and check it out.

MR. SHAW: I take the responsibility for it and I apologize for it.

THE COURT: It is sorrow. The public interest isn't going to suffer. I have finished it now.

MR. SHAW: I take responsibility for it, sir, and I would also state that I spent some two weeks of my time working on that brief and so the mistakes in it are mine. I thought it was a good brief and I apologize for these errors.

THE COURT: It certainly is not a bad brief,
Mr. Shaw. It has a lot of points in it and, as you can
see, it has persuaded me. But still, if you are perhaps
overly detailed as I am it is just bothersome.

MR. SHAW: I make no excuses, sir, I apologize.

THE COURT: That is one difficulty.

the primary difficulty, was my lack of familiarity with the decisions which had been rendered on the expenditure

jqrf

theory. I don't think during and at the close of the trial I really fully appreciated what the expenditure theory was. At any rate, after further reflection on the matter and a study of the cases and of the stenographic minutes and of the exhibits, I am convinced that my initial impression was wrong and that the Government has in fact proved that the charges are sustained beyond a reasonable doubt.

The variation in conclusions between the end of the trial and now is not at all due to questions of fact as I think to questions of law. This is the unusual case where there is no real issue of fact and there is no issue of credibility to be resolved.

The defendant has not challenged the Government's evidence and, of course, has no burden to do so. But the result is that there are no conflicts in the evidence to be resolved. I believe the Government's witnesses and the documentary evidence and the sole issue is whether accepting the Government's evidence the defendant has been proved guilty beyond a reasonable doubt.

It is undisputed that the defendant was born in Memphis on November 8, 1940 and that he has lived in New York since at least September 1967. And that he has not, for any year, filed an income tax return.

And I refer to the stenographic minutes of 263, 264, to Exhibit D, Exhibits 3 through 10 and to page 13 of the stenographic minutes. Because the proof is positive, that there never were any income tax returns filed not only for the years named in the indictment but for any years, the question is whether the Government has proved the other two elements, namely, first, receipt of income in the several years sufficient to show that the defendant was required to file a return, namely \$600 in 1968 and 1969, \$1,700 in 1970 and 1971, and \$2,050 in 1972.

The second element is that the failure to file was wilful. Taking the first element, despite my initial lack of knowledge of the decisions there is a recognized expenditure theory of income described most lucidly to me at least by Judge Goodrich under Conceptor at (199 F. 2nd. 905) and also in the Pinozi case 452 F. 2nd. at 557 and Johnson in the Supreme Court, 318 U.S. 503, an opinion by Justice Frankfurter.

during a year are proved such proof is also proof of receipt of gross income in that year in the name amount provided there is proof that there was zero or substantially ward in the page at the beginning of the year.

This is an unusual case, as Mr. Gallop has pointed out I think both at trial and certainly in his memorandum. It is an unusual case because it is not a tax evasion case but it is a failure to file case. A failure to file case in which the defendant has never filed any returns and I don't believe that our researchers have discovered a single case in the books in which a defendant has been prosecuted for failure to file when he has never filed a return.

All the cases, and the Government apparently was not able to cite one, they are all cases which either involve the wagering tax or involve tax evasion.

I think the principles are largely the same. But there is a difference in that this is an unusual case as far as recorded precedents are concerned. But being a failure to file case it doesn't seem to me that it is necessary for the Government to show that the income received was taxable income but only that it was gross income requiring the filing of a return.

The question is not whether it was reported as taxable or nontaxable income or whether deductions were improperly claimed or the like. It is just whether the defendant had gross income in excess of the required amount. The proof is clear that the defendant

expended in the years in question in excess of the following amounts: 1968, \$15,000; 1969, \$10,500; 1970, \$11,000; 1971, \$23,000; 1972, \$15,500.

In arriving at the figures I have given I have disregarded the cost of living item on which the Government relied. I have forgotten the young lady who came in as an expert witness. I am inclined to believe that that is a perfectly permissible and proper expenditure to include because it simply must follow that the defendant in order to maintain life has to have some expenditure for food, clothing and shelter. The figures to which the young lady testified I think were minimum figures. But, at any rate, to use an extra measure of caution I have eliminated the cost of living figure in the amounts that I have given.

It should also be noted that on November 1, 1970 the defendant stated to a real estate agent that his annual income was \$25,000. That is Government's Exhibit 15 referred to at 71 and 73 of the minutes.

The evidence stablishes overwhelmingly that
the expenditures in the years noted represent income
received by the defendant from women employed by him as
prostitutes and that his business was that of a pimp.
That is the management of prostitutes who turned over to

the defendant their receipts or a substantial part of the receipts. The defendant was engaged in this business during each of the years involved and for a number of years before January 1, 1968, the start of the period here involved.

As part of the Government's burden, however, it must be shown, as I understand the expenditure theory of proving income, that at the beginning of the tax years involved the defendant did not have a net worth from which the expenditures could have been made and this, in the cases, seems to be referred to as proving an opening net worth or a zero net worth or the equivalent.

The evidence not only satisfies me that the defendant had a source of income in the years in question, but also that the defendant spent that income as fast as he received it, according to the old saying, "Easy come, easy go." This means that evidence as to net worth on January 1, 1968 and at the beginning of each later year must be appraised against this background. That is the background of the totality of the evidence showing that the defendant's manner of living was to spend his income as he received it.

Now we start off with January the 1st 1968 to see whether the Government established that the

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

defendant had a zero net worth or substantially zero net woth.

The Government showed that the only inheritance that the defendant received was \$1,000 in 1953. Government's Exhibit 107 shows that.

True, not every inheritance court in the United States was investigated but those in Memphis and those in the City of New York shown by Government's Exhibits 26 through 29 were investigated. An order of the Court in Memphis, Memphis being in Shelby County, Tennessee is very familiar to me because the railroad goes through my hometown and it goes from Memphis to Chattanooga, a dip through North Alabama on the way between the westernmost and the easternmost city in Tennessee. It used to be the old Memphis-Charleston Railroad, but Shelby County, Tennessee, named, incidentally, for an ancester of the United States District judge in North Alabama when I was a boy, Judge David D. Shelby who later served on the Fifth Circuit Court of Appeals, but anyway an order of the Court of Shelby County, Tennessee on September 7, 1960 found that the defendant who was then a minor had nothing with which to pay a counsel's fee except the remainder of his \$1,000 inheritance shown in Government's Exhibit 107.

This establishes to my satisfaction in September

2

3

1960 the defendant had no net worth.

5

6 7

8

10

9

11 12

13

14

15

16

17 18

19

20 21

22

23

24

25

The defendant became 21 on November 8, 1961 and at that time, or rather a little while later actually, I think December 1, 1961, the Court in Memphis authorized transfer to him of the remainder of his inheritance, namely \$352,11.

The Government's investigation as to possible inheritance while limited, as I indicated, to Shelby County and to the Counties of New York, making up New York City, seems to me to have been reasonable and it seems to me that it would be unreasonable to expect the Government to make a nationwide investigation of every inheritance court.

One of the cases that I looked at, Pinozi, 452 F. 2nd 217 is in point on this aspect.

beginning with the stablished fact of no net worth of defendant in September 1960 the evidence shows that the defendant had earnings reported to the Social Security Administration as follows:

1960, \$950; 1961, \$390; 1962, \$1020 and 1963 through 1967, zero. This establishes that no net worth was built up by the defendant from earnings in legal employment required to be reported to the Social Security Administration. In September 1973 and also I believe

during the trial in this year Government agents investigated all branches of all banks within the general area of the residence addresses known for defendant under his real name or under four aliases which he had used, namely Williamson, Bird, Mitchell, Daniel or Daniels. They also investigated the bank in Lorrain, Ohio, where the defendant on one lease application represented that he had a bank account. They asked if the defendant under any of the names had an account during the period 1966 through 1972. This is shown at pages 183, 187 of the stenographic minutes.

The investigation made by the Government agents showed that the defendant as Hines on October 4 1967 opened an account at the New York Bank for Savings at 86th Street in Broadway in New York with a deposit of \$10. That is Government's Exhibit 32. And that no other deposits were made and that is shown by Government's Exhibit 33.

This showed, the investigation, also that under the name Charles Daniel the defendant opened an account on September 18, 1967 at Chemical Bank New York Trust Company with a deposit of \$200; that \$50 was deposited on September 26, 1967; that \$30 was withdrawn on September 26, 1967 and \$215 was withdrawn on October 13, 1967,

leaving a balance on December 31, 1967 of \$5.33. That is shown by Government's Exhibit 18 and 19, pages 83 through 88, of the minutes.

As I indicated earlier there were 44 banks investigated. That is hown on page 304 of the minutes. All of the replies were negative, that is no account, no bank accounts in any of the names used by the defendant except the two as to which I have already reported.

MR. SHAW: If your Honor please, would it be appropriate for me to interrupt your Honor at this point on the Daniel thing? I do want to call to your attention the thing I mentioned before. Your Honor is quite right that at page 85 of the record, Government's Exhibits 18 and 19 were received in evidence.

At pages in and about 247 and 248 I think it is accurate to summarize it by saying that counsel made a motion to strike or to put out that evidence because -- and I hope I don't get these backwards -- the name that the man was shown to have used by other proof was Daniels with an S and the name on the account was Daniel.

Your Honor, at that point, said I am going to reserve decision on the motion to strike of Mr. Gallop and the Government -- and if Mr. Gallop will forgive me, I think Mr. Gallop himself may have been remiss in not

calling that to your Honor's attention before we got to the end of this thing.

I know Mr. Padgett and I were conscious in

the limitation of that from any consideration in our brief

because I think both of us came away with the impression

that your Honor was going to give that no weight at

all because of the S in one instance and the L in the

other. I think the reason why I ought to pipe up at this

point is because we do feel strongly that our proof has

been sufficient even exclusive of that exhibit.

THE COURT: You have certainly blundered the force of my criticism which as I told you is simply giving you my reactions and, remember, that as I must have emphasized to anybody who has ever been in any of my courtrooms, so much happens here that I just can't possibly remember these details.

If I put this case down for a week and I pick it up again it is as if it is a brand new case. I can't keep it in mind. We are getting orders to show cause, preliminary injunctions. It's a mad house.

You have certainly given a good reason why you didn't include it.

MR. SHAW: Beyond that we should have dropped a footnote and made clear why we weren't including it.

THE COURT: I didn't indicate, as I said, any degree of hostility towards the Government.

I have covered the bank accounts. The Government also investigated real estate transactions in New York in the years 1966 through 1972. That is Government's Exhibit 30 as far as they are recorded and they show no transactions by the defendant. What that means is probably not really critical. It's some indication of what the Government did by way of investigation but what else it means, who knows.

There was, though, a more significant showing and that is that the defendant purchased furniture for \$775 on November 10, 1967 and agreed to pay for the furniture at \$50 per month in installments. That is in Government's Exhibit 50.

If the defendant had a cash accumulation or a net worth at that time, according to normal practices and human nature the way folks live and operate on any level of society, he would not have chosen the inconvenience of installment payments. That conclusion was also reached in the Schippani case, 293 F. Sup. 156 at 158 affirmed 414 F. 2nd 1262.

So on all the evidence I conclude that the defendant had a net worth of not more than \$15.33 on

January 1, 1968. I also conclude that at the beginning of each of the succeeding tax years involved the defendant had no net worth beyond a nominal amount.

I conclude this because of the totality of the evidence referred to before showing that the defendant spent his income as he received it and if that was his life style, as I find that it was, then at the end of the year he would have no net worth beyond a nominal amount. Although all of the evidence as a whole shows the defendants spending, as I say, easy come, easy go, there is no confirmatory evidence to which the Government directed my attention and that is the defendant continued to buy furniture.

It seems perfectly evident that the defendant didn't buy furniture only for the place at which he happened to make his abode but the nature of his business was such that he must have had more than one apartment at any one time for the purposes of having women there for prostitution and that those apartments needed furniture. And he continued to buy furniture on the installment plan which indicates, circumstantially of course, but it indicates that he was spending his income as he received it and not accumulating it in a fashion so that he could pay the purchase price of furniture.

| ..

In other words, since he spent his income as he got it he preferred for that reason to buy furniture on the installment plan. Those installment purchases are shown on Government's Exhibits 49 and 50.

I said that that habit of life, spending as he received it, convinces me that at the end of each taxable year his net worth was substantially zero, but there is confirming evidence in that in December 1970 -- and I think this is shown in either Government's Exhibits 50 or 49 or both -- the seller repossessed furniture when there was due a balance of \$580.

The Government gave me that figure in the memorandum but I am convinced that it is accurate because there are two separate accounts for the installment purchases and when you add what is shown on each exhibit as the unpaid balance the two figures aggregate \$580.

This evidence seems to me to establish that the defendant's net worth on January 1, 1971 was substantially zero.

Now there remains the final essential element;
was the defendant's failure to file wilful? I said
before and I repeat here that in this case there isn't
any question about conflicts to be resolved or credibility
of witnesses. It is a question of law, really, I quess,

on the conceded facts whether the Government's evidence is sufficient. The Government certainly did not prove -- and 1 don't suppose could ever prove by direct evidence -- that the defendant was wilful in failing to file in the sense that the issue is did the defendant know that he was required to file a return. That involves the state of his knowledge, the state of his mind, and as we charged habitually in almost every criminal case, the state of a man's mind simply cannot ever be proved by direct evidence outside of an expressed admission because it is a matter peculiarly within his own knowledge.

But from my reading of the cases and principally the case in the Fifth Circuit which I will refer to, I believe that the existence of such a requirement, that is a filing income tax return, is a matter of "Almost universal knowledge."

The expression Judge Hayes used in Edwards

against the United States, 321 F. 2nd 324 in Footnote

3 at page 326 when he wrote for the Fifth Circuit in 1963.

Edwards, as Mr. Gallop correctly points out, was a

wagering tax case.

We have not been able to find any income tax

case. But Judge Hayes in reversing a conviction in

Edwards distinguished between an income tax case such as

we have here and a wagering tax case and it was largely on the basis of that distinction that he voted with another of the panel to reverse the conviction of Edwards. I think it fair to say that if it had been an income tax case the decision in Edwards by the panel would have gone the other way. The conviction would have been affirmed. But in any event, on a rehearing Enbank the Fifth Circuit rejected the distinction that Judge Hayes had made between an income tax case such as the one at Bar and a wagering tax case and affirmed the conviction of Edwards.

There were seven judges on the Enbank. It has grown since then. I think it is a four to three decision.

In any event, the majority said -- and this is what I feel I must rely on here -- "Where the law is plain, definite and well settled and any want of knowledge of its requirements is a fact resting peculiarly within the knowledge of the defendants when the Government has established its case in all other respects, the burden of adducing some evidence to rebut the presumption of such knowledge rests on the defendants."

So under Edwards I think the case at Bar is even stronger for the Government because this is an income tax return case. Also, it seems to me it has to be common

sense because if the Government were required to prove
by direct evidence knowledge by defendant of the law
requiring the filing of income tax returns no prosecution
would ever be successful under the Section 7203 for failure
to file at least where the defendant had never filed a
return.

There is circumstantial evidence of knowledge by defendant of the requirement that he file a return.

Among other evidence it is that the defendant can read and write as shown by numerous documents in evidence with his signature and his participation in many business transactions.

Certainly a person who can read and write in the United States for the last 20 years could not fail to be aware of the fact that income tax returns have to be filed.

by the defendant. The use of false names, the payment of tent and bills in cash or money orders, the avoidance of normal bank accounts or bank checks, the use of false intermation as to employment, all of this suggests that the defendant was attempting to conceal his income partly to avoid any reports to the Internal Revenue Service which might trigger an investigation of his failure to

22 23

file and, of course, partly because he wished to conceal his illegality, that is the illegality of his occupation under city and state law, from the authorities. Under this circumstantial evidence the burden of producing some evidence of ignorance of the law seems to be on defendant and as has been said in many decisions, at least one in the Supreme Court, I think it was Holland, and elsewhere, in such a situation the defendant remains silent at his peril.

One part of the Government's suggestion I
haven't accepted and that is that failure to file returns
prior to the years in question is evidence that the
defendant had no income in those years above the
statutorily required amount for filing a return. I
haven't really taken time to analyze what is wrong with that
theory in my view but I just instinctively feel that there
is something wrong with it and perhaps out of an excess
of caution at least I have not given it any weight.

Mr. Gallop submitted a very able memorandum which is not surprising in view of his able representation of the defendant at the trial and at all other times.

His memorandum and representation has been thorough and able and careful. But for the reasons I have indicated this afternoon I feel I must find the defendant guilty

on Counts 1 through 5.

What about a date for sentence?

MR. SHAW: Might I be excused, Mr. Padgett being here?

THE COURT: Yes, of course. Mr. Padgett, your presence is noted.

Is there any hurry about sentence, Mr. Padgett?
MR. PADGETT: No, sir.

THE COURT: Mr. Gallop, is August 30th a good day? That is a Friday and it is before the Labor Day weekend, I think.

MR. GALLOP: Might I suggest that I might possibly. I have no plans but rather than have that, either the week before or the week after.

THE COURT: What about the 23rd of August?

Is that all right?

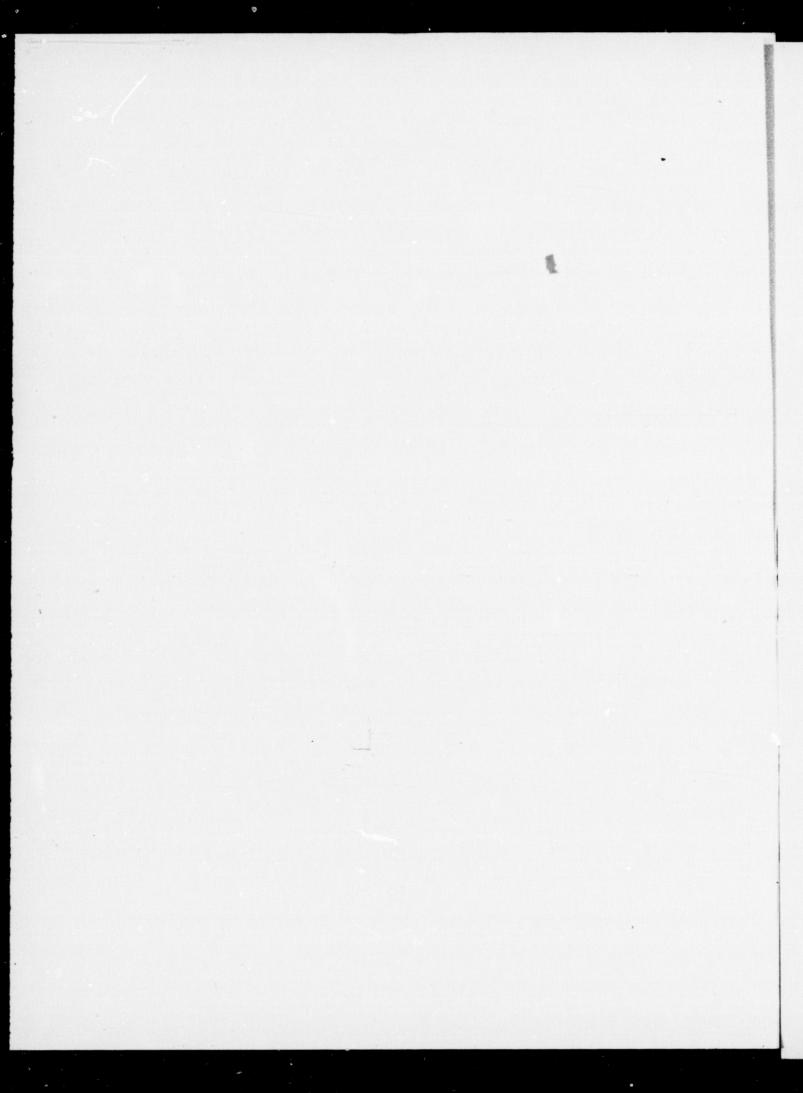
MR. PADGETT: Obviously the Government will have a representative at sentencing no matter when it is.

I just point out to the Court as I have in the past that

I will be at Fort Bragg, North Carolina at the time.

THE COURT: Is that a reason for putting it off until September?

MR. PADGETT: Not unless it is convenient to the Court.



THE COURT: My practice is to deal with motions and sentences on Friday afternoons but Friday the 6th of September there is a judicial conference and it couldn't be then. It would have to be --

MR. PADGETT: Any time in August at the Court's convenience.

THE COURT: Mr. Gallop, August 23rd?

MR. GALLOP: That is acceptable.

THE COURT: All right, August 23rd at 2:30 and unless we change it to a better room it will be here in this room.

What is Mr. Hines' bail status?

MR. GALLOP: He has \$1,000 cash securing a \$10,000 personal recognizance bond.

THE COURT: Is there any reason why he shouldn't be continued in the same bail status?

MR. PADGETT: No, your Honor.

THE COURT: Mr. Gallop, we will continue Mr.

Hines in the same bail as heretofore and, of course, as

I have indicated why I have disagreed, Mr. Gallop, with

your presentation but you can yet be reviewed, fortunately,

if you feel so disposed and you may do that. I think we

are finished. Thank you.

(Adjourned.)